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In Chancery of New Jersey

Notice of Appeal 10

(*Filed November 16, 1927.*)

Between JOHN WILNO, <i>Petitioner,</i> <i>and</i> ANNA WILNO, <i>Defendant.</i>	}	On Appeal from Chancery on Petition for Divorce.	20
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John Wilno, the above-named petitioner, hereby appeals from the decrees of dismissal filed in this cause and dated November 7th, 1927, made by the Chancellor on the advice of Vice-Chancellor Buchanan, and from every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

ROMULUS P. RIMO, 30
Solicitor for and of counsel
with petitioner.

Dated November 14th, 1927.

I conceive there is good cause for appeal in the above-stated cause.

ROMULUS P. RIMO,
Of counsel.
 (1) 40

Petition of Appeal

Filed November 17, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between	}	On Petition from Chancery.
	JOHN WILNO, <i>Petitioner-Appellant,</i>		
	<i>and</i>		
	ANNA WILNO, <i>Defendant-Appellee.</i>		

20 To the Honorable, the Court of Errors and Appeals, in the Last Resort in All Causes:

The petition of John Wilno, the appellant in the above-entitled cause, respectfully shows that—

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date November 7th, 1927, in a certain cause in said Court of Chancery, wherein the said John Wilno was petitioner and the said Anna Wilno was defend-
30 ant in this respect, to wit, that the said decree ordered, adjudged and decreed that petitioner's petition be dismissed.

And the petitioner appeals from the decree of the Chancellor, which decree, as aforesaid, upon the ground that the same is erroneous in that—

(a) That said decree was based upon the conclusion that the evidence was insufficient to sustain burden of proof which is cast upon the petitioner to show that the wife did willfully and obstinately desert petitioner;
40 whereas the proof and evidence submitted clearly

showed that wife had deserted the husband, petitioner, without justifiable cause, and had remained away willfully for over a period of two years, continuedly and obstinately and because of such proof, the decree should have been for the petitioner.

(b) Said decree was based upon the conclusion that the testimony, as to what transpired and the causes and circumstances, which attended the leaving by the de-
10 fendant-appellee, the wife, was in conflict, and that the conclusion under such conflict was in favor of the wife, defendant-appellee, when it should have been in favor of the petitioner-appellant.

(c) Said decree was based upon the conclusion that the wife, defendant-appellee, left, but a mere leaving does not necessarily constitute desertion, when, in fact, the testimony not only shows that the wife, defendant-appellee, left, but had no cause or justifiable ground to
20 leave according to her own testimony, which was merely about what petitioner-appellant expected to do, which testimony in no way showed that he had offended her or assaulted her or done anything that would justify her leaving, in fact, her testimony is in conflict, because in one place she stated that the conversation occurred on September 7th, and in the other place it says on Sep-
20 tember 28th, 1923, in which testimony she is not corroborated by anyone.

(d) Said decree is not supported nor warranted by the evidence ; by said evidence it did appear that the
30 defendant-appellee, the wife, deserted the petitioner-appellant willfully, according to the testimony of the defendant-appellee herself, and was obstinate, in that she admitted that her father told her of a visit made by the husband to see her, under which information she made no attempt to learn of the reason for the visit nor attempted to go back with the husband, and that she did not live with her husband since October 7th, 1923, nor had anything to do with him.

(e) It may be true that a mere leaving does not constitute desertion as concluded by the Chancellor, but a mere leaving without justification is willful in the eyes of the law, and constitutes desertion, according to the statute and purpose of the divorce laws, and the testimony offered in the case at no place shows a justifiable reason or cause to leave under the law, and the mere
10 leaving without justifiable cause is willful desertion, and said decree should be therefore reversed.

(f) Said decree is erroneous in that the court concluded that the husband, petitioner-appellant, caused the leaving, when, in fact, the evidence failed to disclose any reason or cause of a justifiable nature which would permit the defendant-appellee to leave, and said decree should therefore be reversed.

(g) Said decree is erroneous in that the court concluded that the petitioner acquiesced in the leaving by
20 the defendant-appellee, when the testimony, not only by the petitioner-appellant, but corroborated in by a disinterested witness, about the moving of the furniture, corroborated the petitioner-appellant in saying that he did not only say "not to leave for the children's sake," at least, which testimony, if true, clearly shows that he could not have acquiesced in her leaving.

(h) The petitioner has established by the proofs that the desertion was willful, continued and obstinate for a statutory period, and the decree should have dissolved
30 the marriage between the petitioner and the defendant.

(i) Said decree was based upon the conclusion that the petitioner-appellant had not proved sufficiently that he had made reasonable advances to seek the return of his wife, defendant-appellee, but, on the contrary, it seems that the evidence is clear, concise, convincing and preponderated, in fact admitted by the defendant-appellee, and the daughter of the parties to this suit, that petitioner-appellant sought the return of his wife, and further, a member of the court in the person of Erwin
40 E. Marshall, presiding judge of the Mercer County

Common Pleas Court, testified that petitioner-appellant sought the return of his wife, defendant-appellee, and further, a probation officer, a disinterested person, in the person of William Morrison, testified of the desire of the petitioner-appellant to have his wife return to him.

(j) In the said decree recites and adjudges that your petitioner-appellant has not sustained the allegation of his petitioner excepting that of marriage, and is not en-
10 titled to the relief therein prayed, but prays that your petitioner's said petition be dismissed from which your petitioner appeals and from every part thereof, on the ground that the same is erroneous, and that the Chancellor should have found and adjudged the several allegations in your petitioner's petition to have been proved, and that the defendant-appellee, the respondent in the original proceedings, should have been guilty or willful, continued and obstinate desertion by her of your petitioner, for the term alleged in your petitioner's petition,
20 and should have ordered, adjudged and decreed that your petitioner be divorced from the bonds of matrimony with the defendant-appellee, for the cause aforesaid, and that your petitioner should have the other relief prayed in and by his said petition.

(k) In that the said decree was based upon evidence, but the conclusion from the evidence was erroneous because the court failed to consider or take as true the testimony to the effect as given by the wife at a former trial, that she would not return to live with her hus-
30 band, even though she were asked to, which testimony clearly showed her desire to leave, which was obstinate and willful, and further, the fact that she had her husband arrested for deserting her, and the fact that no support was given to her by her husband, because the court knew from the evidence of the case that she had left, all of which clearly showed that he was doing everything to permit him to return to her.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars afore-
40

said, reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper or meet.

ROMULUS P. RIMO,
*Solicitor for and of counsel
with Petitioner.*

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Answer to Petition of Appeal

(Filed December 17, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

20

JOHN WILNO,

Petitioner-Appellant,

and

ANNA WILNO,

Defendant-Appellee.

On Appeal from
Chancery.

The answer of Anna Wilno, the above-named appellee, to the petition of appeal of John Wilno, the above-named appellant:

30

The appellee admits it to be true that a certain decree was, on November 7th, 1927, made and entered in the Court of Chancery, as in the petition of appeal, is stated; but as to the substance and form thereof, this appellee prays to refer thereto when the same shall be produced. And this appellee is advised and believes that said decree is agreeable to law and equity, and she prays that the same may be affirmed, with costs to be taxed, in favor of this appellee.

(Signed), DAVID FRANKEL,
Solicitor for and of Counsel with Appellee.

40

Decree of Dismissal

(Filed November 10, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

JOHN WILNO,

Petitioner,

and

ANNA WILNO,

Defendant.

On Petition for
Divorce, &c.

10

This cause coming on to be heard in the presence of Romulus P. Rimo, of counsel with the petitioner, and David Frankel, of counsel with the defendant, on petition, answer and oral proofs taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel, from all of which it now appears satisfactorily to the Chancellor, that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the twenty-sixth day of July, A. D. one thousand nine hundred and three, and that it appearing to the court that the petitioner has not sustained the truth of the allegations of his petition, and is not entitled to the relief therein prayed;

20

It is thereupon, on this seventh day of November, nineteen hundred and twenty-seven, ordered, adjudged and decreed that the petitioner's petition be, and the same is hereby dismissed.

30

And it is further ordered, adjudged and decreed that the petitioner pay to David Frankel, solicitor for the defendant, a counsel fee of one hundred and fifty dollars, together with costs to be taxed.

E. R. WALKER,

C.

Respectfully advised,

MALCOLM G. BUCHANAN,

V. C.

40

Petition

(Filed February 1, 1927.)

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

10 1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Anna Wilno, the defendant in this suit, on the twenty-sixth day of July, 1903, by Father Pozzi, the priest at St. Joachim's Church, a Catholic Church, at Trenton, New Jersey.

2. Defendant deserted petitioner in the month of December, 1924, ever since which time and for more than two years last past said defendant has willfully, continuedly and obstinately, deserted the petitioner.

20 3. Petitioner and defendant are *bona fide* residents of the State of New Jersey and were when this cause of action arose and have ever since (and for more than two years next preceding the commencement of this action) continued to be such residents.

4. Seven children were born of the marriage aforesaid, to wit: Rose Wilno, twenty-two years of age; Flossie Wilno, twenty years of age; Mary Wilno, eighteen years of age; August Wilno, sixteen years of age; Anna Wilno, fourteen years of age; John Wilno, twelve years of age; Anthony Wilno, ten years of age;
30 all of the children excepting Rose are now in the custody of the defendant, and the petitioner is providing support for all the children in the custody of the defendant.

5. Your petitioner prays that the marriage between your petitioner and the defendant may be dissolved for the causes aforesaid according to the statute in such case made and provided; and that your petitioner may have such further relief as may be just.

And your petitioner will ever pray, etc.

40

ROMULUS P. RIMO,
Solicitor of Petitioner.

STATE OF NEW JERSEY }
COUNTY OF MERCER } *ss.*

John Wilno, being duly sworn according to law, upon his oath, deposes and says that he is the petitioner named in the foregoing petition, and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition. 10

JOHN WILNO.

Sworn and subscribed to before me
this 31st day of January, 1927.

ROSE LERNER PERLMAN,
M. C. C. of N. J.

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30

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Answer to Petition

(Filed March 3, 1927.)

Between

JOHN WILNO,

Petitioner,

10

and

ANNA WILNO,

Defendant.

} On Petition for
Divorce.

The answer of Anna Wilno, defendant, to the petition of John Wilno, petitioner.

- 1. This defendant admits it to be true that petitioner and defendant were married as in said petition is alleged.
- 20 2. This defendant denies that she deserted the petitioner in the month of December, nineteen hundred and twenty-four, and she denies that ever since that time, and for more than two years next preceding the commencement of this action, she has willfully, continuedly and obstinately deserted the petitioner, but on the contrary, defendant says that petitioner deserted this defendant on October 7th, 1923, on which date the said petitioner forced the defendant and their minor children
- 30 out of his house, located at 409 Bridge street, Trenton, New Jersey, from which time the defendant has ever since lived apart from the petitioner who has never sought her return to him. Petitioner by the true intent and meaning of the statute in such case made and provided, has, ever since the 7th day of October, 1923, and for more than two years last past, willfully, continuedly and obstinately deserted the defendant.
- 3. This defendant admits it to be true that the petitioner and this defendant were *bona fide* residents of the State of New Jersey when this supposed cause of action
- 40 arose as alleged in the petition.

4. In answer to paragraph 4, the defendant states that she had eleven children, but that two were lost by miscarriage and one was born dead and another child died in its minority. There are now living seven children born of the marriage aforesaid. The defendant states that the ages of three of the seven children as alleged in the petition are untrue in that Anna Wilno, designated as fourteen years of age, is in truth and fact only seven

10 years of age; and John Wilno, designated as twelve years of age, is in truth and fact ten years of age; and Anthony Wilno, designated as ten years of age, is in truth and fact only four years of age. As to the remainder of paragraph 4 of the petition, the defendant states that all of the children except Rose, who is married, are in the custody of the defendant and the petitioner is only providing partial support for the defendant and the children.

20

FIRST SEPARATE DEFENSE.

1. The defendant, since the 7th day of October, 1923, has promiscuously committed adultery with various females and particularly in the months of January and February, 1927, committed adultery with Loretta Pizuti, at Trenton, in the County of Mercer and State of New Jersey. This defendant has not condoned said acts of adultery since her discovery of same.

ANNA WILNO,

Defendant.

30

DAVID FRANKEL,

Solicitor for Defendant.

40

Testimony

IN CHANCERY OF NEW JERSEY.

Between

10 JOHN WILNO,
Petitioner,

and

ANNA WILNO,
Defendant.

} On Petition, &c.

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Wednesday, the fifth day of October, 1927, at eleven o'clock A. M.

20 Before Hon. MALCOLM G. BUCHANAN, Vice-Chancellor.

Appearances—Romulus P. Rimo, Esq., for the petitioner; David Frankel, Esq., and George A. Cella, Esq., for the defendant.

Erwin R. Marshall, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

30 Direct examination, by Mr. Rimo.

Q. In December, 1924, you were judge of the Quarter Sessions Court of this county?

A. I was.

Q. And do you recall a criminal case before you of the State of New Jersey against John Wilno?

A. Yes.

Q. Do you recall that in that case that there was a motion to *nolle pros*, as to deserting the wife?

40 Mr. Frankel—That is objected to, the records speaks for and that is the best evidence.

The Court—He may answer.

A. I don't recollect as to that, Mr. Rimo.

Q. During the course of the trial, Judge Marshall, do you recall a question propounded to the wife whether she was willing to resume cohabitation with her husband?

A. I recall that Mrs. Wilno was a witness on the part of the State in that case. I do recall that that question was propounded to her whether she was willing at that time to go back to her husband, and my best recollection is that she stated that she was not, and then she assigned the reason why she was not. 10

By the Court.

Q. Do you recall her reason?

A. One of the reasons, as I recall it, was that she charged that he was too friendly with other women.

Q. Do you recall her saying—do you recall any other reason that she gave at that time aside from the one you mention? 20

A. I recall that she complained about the fact that her husband did not recognize the children on the street, or something to that effect.

Q. Do you recall whether she used any profanity during the trial against her husband?

A. I don't recall as to that.

Q. You don't recall?

A. No.

Q. Do you recall a question propounded to Mr. Wilno as a witness for himself as to whether he would be willing to take his wife to live with him? 30

A. I recall that both at the trial and at an interview with him before sentence was passed, and he professed that he was willing to have his wife go back.

Q. He said that?

A. Yes.

Q. Was the sentence passed on the Friday following the trial or had some period elapsed?

A. I couldn't say as to that. I refresh my memory upon the record yesterday, and found the sentence was 40

passed on the 23d of January, 1925, but whether it was the Friday following the trial or not, I couldn't tell you.

Q. Do you recall whether Mrs. Wilno was present at this interview when Mr. Wilno said he would be willing to take her back?

A. I don't recall.

Q. Do you recall whether there was any award or
10 order on the part of your court for the support of the wife?

The Court—That is hardly the way to prove a matter of record, Mr. Rimo.

Mr. Rimo—I will withdraw the question.

Cross-examination, by Mr. Frankel.

Q. In your experience with the defendants on trial for
20 desertion and neglect of wife and children, is it not usual that the defendant will say on the stand that he was willing to take his wife back?

Mr. Rimo—I object to that.

The Court—Strike it out.

Q. You don't know whether John Wilno asked Mrs. Wilno herself to come to live with him, do you?

A. I do not.

Q. Now, do you recall that the testimony given by
30 Mrs. Wilno at the trial when the question was asked of her, whether she would go back and live with her husband, whether she said, "Sure I would go back and live with my husband, but in one way I don't think he would take me back." Do you recall that?

A. I don't recall that, no. I don't recall that language. No, I don't.

Q. Do you recall this? That she said that if he did take her back, he would only use her as a house rag?

A. That may have been one of the reasons she assigned, I don't recall that exact language, but the effect of it was perhaps as you have stated.

George J. Bacso, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Bacso, you are one of the employes at the county clerk's office of this county?

A. I am.

Q. And were you in December, 1924?

10

A. Yes, sir.

Q. And do you have a record here this morning of the trial of the case of the State of New Jersey against John Wilno?

A. I have.

Q. You have that here?

A. Yes.

Q. Do you have the minutes of that trial?

A. I have.

Q. Would mind turning to your minutes?

20

A. Yes. (Doing so.)

Q. Do you find in your minutes a motion of an order
nolle prosequi?

The Court—How is that competent, Mr. Rimo?

Mr. Rimo—It was just simply to show a reason on the part of the court at the time.

Mr. Frankel—It is objected to.

The Court—I cannot hear that in this case. This is a proceeding entirely different and not between the same parties.

Mr. Rimo—Yes, but I thought that would bear
30 out the facts.

The Court—It is not competent at the present time.

Mr. Rimo—I will withdraw the witness for the moment.

James S. Kirkham, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Kirkham, you are the county detective of this county?

A. Supposed to be.

Q. And you were in December, 1924?

A. Yes.

Q. Do you recall the trial of the State of New Jersey against John Wilno?

10) A. I do.

Q. Do you recall Mrs. Wilno testifying?

A. Yes.

Q. Do you recall what she testified to, as to whether or not she would return to live with her husband?

A. She said that she would not.

Q. She said she wouldn't?

A. She did.

Q. And do you recall Mr. Wilno testifying?

A. Yes.

20) Q. Do you recall whether he was asked whether he would be willing to take his wife back?

A. Yes.

Q. Do you recall what his answer was?

A. He said he would.

Q. Do you happen to remember when she testified that she had left him?

A. That she had left him.

Q. Yes.

A. No, she didn't testify that she had left him.

30) Q. Do you remember her testifying that she went from 409 Bridge street to Johnson Court, don't you remember that?

A. I don't remember that part.

Q. Do you remember just what John Wilno said when he was asked whether he would take her back?

A. He said he was willing to make a home for her, or words to that effect.

By the Court.

Q. This was at the trial?

40) A. In the trial before Judge Marshall.

Q. At the trial where he was defendant?

A. Yes, sir.

Q. Do you recall what reasons were given, if any, by Mrs. Wilno?

A. Yes. She said that he had thrown them out and that he was running with another woman, and also that he ignored she and the children on the street and wouldn't recognize them. 10

Q. Did you hear what Mr. Wilno said about that, whether he threw them out or not?

A. Yes.

Q. What did he say?

A. He said he didn't.

Q. And did you hear what he said, if anything, whether he disregarded his children on the street?

A. My recollection was that he said that the children had spoken to him on the street about coming back, and they had some kind of an altercation on the street. 20

Q. Do you remember whether he said that he tried to get his wife back before the trial?

Mr. Frankel—That is objected to.

A. I don't recall that.

Q. Did you recall any testimony from Mrs. Wilno during the trial that was foul, that was profane, against her husband?

A. Well, she was quite talkative, but I don't know that I recall any profanity. She seemed to be very bitter against him. 30

Cross-examination, by Mr. Frankel.

Q. You say she was bitter?

A. Yes.

Q. By being bitter do you mean as to her relating his conduct towards her?

A. His treatment of her.

William N. Morrison, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows: 40

Direct examination, by Mr. Rimo.

Q. Mr. Morrison, you are the probation officer of this county, are you not?

A. Yes.

Q. And you were about December 24?

A. Yes.

Q. Do you recall a trial of the State of New Jersey
10 against John Wilno before his honor, Judge Marshall?

A. I don't recall having been present at the trial.

Q. You do not?

A. No.

Q. And do you recall a visit to Mrs. Wilno's home
that you made?

A. Yes.

Q. When?

A. That was some time after he was placed on pro-
bation. He was placed on probation, I believe, in Janu-
20 ary, 1925, and that was along in February, 1926. In
mid-winter of 1926.

Q. And who was present at the visit that you made?

A. At her home?

Q. Yes.

A. Well, I went there with Mr. Wilno.

Q. John Wilno?

A. Yes.

Q. Who else was there?

A. And Mrs. Wilno was there with a baby, and, I
30 think, her two daughters and one of the boys, maybe
two boys. I know one boy, at least, the small boy.

Q. What occurred while you were there?

A. Our purpose in going there was because Mrs.
Wilno had complained she couldn't make both ends meet
on what money she received from her husband. At that
time, I had been collecting \$15 from Mr. Wilno and
have been up to the present time, and when she couldn't
exist on the \$15 a week, she said he would have to take
the children, so I got Mr. Wilno and went out there and

40

he said he was willing to take the boys, and after he got
there she got one boy ready, or told him to get his clothes
on and get ready to go, and we started out of the room.
I thought everything was all right. He said something
to Mrs. Wilno—I don't know whether it was in a sar-
castic way—that he could take care of the children. She
told him he couldn't have the boy, and she ordered Mr.
Wilno out of the house, and we both went. 10

Q. She ordered him out?

A. Yes.

Q. Then you went?

A. We did.

Q. While you were there, and before Mr. Wilno said
anything, did you say anything to Mrs. Wilno about
trying to get together?

A. I don't recall having said anything of the kind
now.

Q. And do you remember what Mrs. Wilno said to
Mr. Wilno at the time? 20

A. She said so much.

Q. Do you remember what it was?

A. She said so much; she was very angry at him and
he was talking to her about heat in the room. He told
her there was no use spending so much money for coal.
She had been using coal spuds. He reminded her that
he had plenty of coal.

Q. Did Mr. Wilno say anything to you, while there,
about being willing to reconcile and go back to live with
the wife? 30

Q. Yes.

A. I don't recall that, no.

Q. There was a child that was sick, wasn't there, at
that visit?

A. A baby.

Q. A baby?

A. Yes, sir.

Q. And do you remember her using vile language
toward her husband at that time? 40

A. Yes, she did.

Q. And do you recall about what the language was?

A. I remember her telling him to get the hell out of here. That is one way she invited him out of the house.

Q. Do you recall any conversation, such as a conversation you had with Mr. Wilno in her presence where "we are not making any headway, the best thing for us
10 to do is to leave?"

A. That is what I said.

Q. Just how did that come about, from what was being said at the time, Mr. Morrison?

A. I think there was a threat of some kind on her part to bang him over the head, and she threatened him, and I realized they were not making any headway, and I told him I thought we had better leave.

Q. And you left?

A. Yes.

20 Q. Do you mean about banging Mr. Wilno over the head?

A. Yes.

Q. Mr. Morrison, had you had occasion before that to go to her house?

A. I had never been there before.

Q. You hadn't?

A. Not inside the house; I had been on the step one time.

Q. Had you had occasion, since the time you speak
30 of, to speak to her about Mr. Wilno being willing to take her back?

A. No.

Q. You had not?

A. No.

Q. Do you recall Mr. Wilno having been himself at the house to take her back?

A. I don't know whether he was or not.

Q. You don't know that?

A. No.

Q. Do you recall a conversation to the effect that he was—a conversation he had with you—

Mr. Frankel—I object to that, it was not made in the presence of Mrs. Wilno.

The Court—Objections sustained.

Q. Do you recall who was present at the time you were at Mrs. Wilno's with Mr. Wilno?

The Court—You have already asked him that. 10

Mr. Rimo—I will withdraw the question.

Q. Do you recall, Mr. Morrison, whether this young man was there? (Indicating.)

A. I don't recognize him now, that has been two years ago. He may have outgrown me.

Q. Do you recall there were others there?

A. Yes.

The Court—He has already said so.

Q. Mr. Morrison, has Mrs. Wilno ever told you, in the presence of Mr. Wilno, that she was willing to go
20 back?

A. No.

Cross-examination, by Mr. Frankel.

Q. Mr. Morrison, did Mr. Wilno ever tell you that he wanted you to intervene to bring his wife back to him, or to ask his wife to come back with him?

A. I think on one occasion he made such a remark as that. I told him he wasn't a kid, it was up to him to go
30 back and invite her himself.

Q. What did he say?

A. At the early part of the trouble he claimed that the home was still open, at either 407 or 409 Bridge street, that he owned.

Q. You are referring to the time of the trial?

A. Yes.

Q. Now, you said something about Mrs. Wilno telling him that she was going to bang him on the head on the occasion of your visit to that home?

A. Yes.

Q. Was that after he had made some remarks to her that caused her to grab her child back?

A. Yes.

Q. It was?

A. Yes, the child was crying as we were all ready to go out of the room.

10 By the Court.

Q. Things were amicable until the time you made some remark?

A. Yes.

Q. And her conduct and speech hostile toward him was the result of those remarks on his part, is that the fact?

A. Yes, sir.

Q. The reason for your visit there with Mr. Wilno was?

20 Q. Mrs. Wilno had asked that you ask Mr. Wilno to send some coal there? Isn't that a fact?

A. No, no. The daughter had been to the office and at that time the daughter was out of work, and Mrs. Wilno claimed she couldn't possibly exist on \$15 a week, and then she said he would have to take the children.

Q. Do you recall one of the daughters—that is, Flossie spoke up and said, when he agreed to take the children, "how about mom, pop, aren't you going to give her heat?"

30 A. I don't remember that.

Q. Do you deny that?

A. There was so much said that no one could understand it all. They were going thick and fast for a time.

Q. You remember that he said he doesn't want her around there, and that she would interfere with the business?

A. He always claimed about that, that she came around to his business place and interfered with the business.

40

Q. That is what he said at that time, that he didn't want her to come back, and that she would interfere with his business?

A. Well, when he was going to take the child, she asked leave to see the children. He told her he didn't want her to come down and interfere with the business.

Q. That was when she asked to be permitted to go down and see the child?

10

A. Yes, after he took them, yes.

Q. He refused to permit her to do that?

A. No, he said he didn't want her to come down interfering with his business at his business place.

Q. You have taken an affidavit in this cause?

A. The business place is not at the same address where he lives.

Q. I believe it is, 409 Bridge street. You have taken an affidavit in which you said, I have seen and talked with John Wilno a number of times, and he has never told me or expressed a desire that he wanted to have his wife back with him and provided for him?

20

A. Yes, I don't believe he ever did.

Re-direct examination, by Mr. Rimo.

Q. Just as you were about to leave the house of Mrs. Wilno at that time, do you recall Mrs. Wilno saying to the husband, I hope you go out in the car and get ditched?

A. I don't remember.

30

Mr. Frankel—I object to that.

Re-cross examination, by Mr. Frankel.

Q. That boy that arose back there before—that is not a member of Mr. and Mrs. Wilno's family?

A. I don't know the boy.

Q. He isn't, is he?

A. I don't him.

40

Q. You remember when you were with Mr. and Mrs. Wilno, that there was a strange boy other than her own children, isn't that a fact?

A. I don't remember that. We were all in one room, in the middle room of the house, and the best I can remember is, the daughters, the mother and the baby and the boy and Mr. Wilno himself.

10 Q. Do you remember her sister being there at the time?

A. I don't remember that she was, she may have been there. The hallway runs the full length of the room and we stayed right in the middle room.

Q. That is the only room that was warm, wasn't it?

A. Yes.

Mr. Frankel—I want to ask him now whether he recalls seeing John Wilno with a large roll of paper money in his pocket.

20 Mr. Rimo—I object.

The Court—How is that material under the pleadings?

Mr. Frankel—On the question of alimony. I believe the defendant; he states he makes \$30 a week.

The Court—I don't see that that would prove anything. The question doesn't state how large a roll, and whether they were \$1 bills or \$100 bills would not appear, I presume.

30 *Michael Papero*, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Papero, where do you live?

A. 21 Asbury.

Q. In Trenton?

A. Yes, sir.

Q. Where were you living in October, 1923?

A. 21 Asbury.

40

Q. Did you know Mrs. Wilno at that time?

A. Yes.

Q. Did you have occasion to do anything for her?

A. Yes.

Q. What?

A. She come to my home, she wanted me to move her and I asked her when, and she said the next day, so I went there in the morning and I didn't think they were 10 separated, I thought they were all moving together. And I went upstairs and I asked her what she wanted moved, and her daughter come upstairs, and she showed me what she wanted moved. And I didn't think there was any trouble in the house, so when I come downstairs, I don't just remember now, but something like Johnnie said, "Well, if you are leaving, you will stay for the kids' sake, anyhow."

Q. And where was this house that you were moving the stuff from? 20

A. 409 Bridge street.

Q. Is that where Mr. and Mrs. Wilno were living?

A. At that time, yes.

Q. That is where they were living?

A. Yes.

Q. Where did you move the stuff to?

A. Chancery place, I think it was.

By the Court.

Q. When was this?

A. I don't remember just now. I have been out 30 of the business three years.

Q. You can give some approximate date, how long ago?

A. It has been 1924, I think; I am not sure.

Q. What time in 1924?

A. I don't remember just now.

Q. Well, the summer?

A. In the summer.

Q. What time of the day was it that you moved?

40

A. Why, it was around half-past seven or eight o'clock.

Q. That is the time you got there?

A. That is the time I got there to move.

Q. What time did you finish?

A. Oh, it was around noon.

Q. Who paid you for moving?

10 A. Mrs. Wilno.

Q. Did she pay you right away?

A. I don't believe she had, she paid me a little every week.

Q. But she paid you?

A. Yes.

Q. Since that time, do you know where Mr. Wilno has been living?

A. Yes.

Q. Where?

20 A. 409 Bridge street.

Q. Is that the same place?

A. The same place.

Q. Do you know whether Mrs. Wilno is living at Johnson Court?

A. No, sir.

Q. Do you know where she is living?

A. No, sir.

Q. When she came to ask you to move her, what did she say to you?

30 A. Why, she says, "I want you to move me to-morrow morning." That was at night when she came to the house. "I said about what time." She said, "Around seven or half-past." That's all she did say.

Q. What did you say?

A. I said, "All right, I will be around."

Q. You told her you would go?

A. Yes.

Cross-examination, by Mr. Frankel.

40

Q. Did you testify for the State in December, 1924?

A. No.

Q. When John Wilno was charged with desertion, to compel him to support his family?

A. No, sir.

Q. This was at the Court House. Did you testify at the Court House before Judge Marshall?

A. I was called there.

10

Q. You were called?

A. Yes.

Q. You were called on the witness-stand?

A. Yes. No, not on the witness-stand. I was called in a back room there.

Q. Do you recall that when they were moving at the house what John Wilno was doing, do you recall that? Yes or no?

A. At the house you mean?

Q. Was he at the house?

20

A. Yes.

Q. Do you recall him sitting on a chair and saying, "Hurry up and get the hell out of here, and make it quick, too."

A. No, sir.

Q. You didn't?

A. I didn't?

Q. You don't recall that?

A. No, sir.

Q. Are you sure of that?

30

A. As soon as I walked in the house, I asked Mrs. Wilno "Where is the stuff packed—is it packed here?"

The Court—That is not an answer to the question.

Q. (Reporter repeats the question as follows): "Do you recall him sitting on a chair and saying, "Hurry up and get them the hell out of here, and make it quick, too." Did John Wilno say to you, "Hurry up and get them to hell out, and make it quick, too?"

A. I didn't hear it.

Q. You did not?

40

- Q. Have you ever been in his place of business?
 A. I walk in there, but not frequently.
 Q. When?
 A. The last time I remember being in his place was when I brought a friend of his there with a cab, my taxi.
 By the Court.
 Q. When was it?
 10 A. Oh, that has been about six months ago.
 Q. Who was there?
 A. I don't remember.
 Q. You don't know who it was?
 A. I don't remember, it was a stranger to me.
 Q. Was the girl about seventeen years of age?
 A. No, this was a man.
 Q. What kind of business is Mr. Wilno in?
 Mr. Rimo—That is objected to as improper cross-examination.
 20 The Court—It is not cross-examination.

John Wilno, the above-named petitioner, being duly sworn in his own behalf, testifies as follows:

- Direct examination, by Mr. Rimo.
 Q. Mr. Wilno, where do you live?
 A. 409 Bridge.
 Q. 409 Bridge street?
 A. Yes, sir.
 30 Q. And how long have you lived there?
 A. Lived there since 1919.
 Q. And are you married?
 A. Yes, sir.
 Q. What is your wife's name?
 A. Annie Wilno.
 Q. When did you get married, Mr. Wilno?
 A. In the year of 1903.
 Q. What date?
 A. July 26th.
 40 Q. By whom?

- A. By Father Pozzi.
 Q. Where?
 A. On Butler street, in the Italian Catholic Church.
 Q. In Trenton?
 A. Yes, sir.
 Q. And after you were married, where did you go to live?
 10 A. With my mother.
 Q. Where was that?
 A. At 328 Ferry.
 Q. How long did you live there?
 The Court—Is that important? Just get the period of his residence in the State.
 By the Court.
 Q. You have lived in Trenton ever since you were married?
 A. Yes.
 Q. Had your wife lived in Trenton ever since you 20 were married?
 A. As far as I know.
 Q. As far as you know?
 A. As far as I know.
 By the Court.
 Q. Well, don't you know?
 A. Yes.
 Q. Then why not say so?
 Q. Is your wife living with you now?
 A. No, sir.
 30 Q. When was the last that she lived with you?
 A. In October 7th.
 Q. Which year?
 A. '23.
 Q. Where were you living at the time?
 A. The same building I am living now, 409 Bridge street.
 Q. You were living at the same place?
 A. Yes.
 40

Q. Tell us how it happens that you are not living with her?

A. Well, she was a woman always started an argument in the house. I would say to her, "Listen, woman, please do it for the sake of the kids, why don't you cut this argument out, now this is going a little too far." I saw we have so much objections between the two.
10 "Let's cut the argument out, we are getting older every day, for the sake of the children, let's cut it out and try to live proper. If you feel like living that way, I don't what is going to become of us."

Q. What were the arguments about?

A. Well, I always complained about my meals. I was working on the middle trick, as we called it at that time, from three to eleven, and half the time I wouldn't get the proper meals. You can find all kinds of chambermaids around there upstairs. I used to say, "If the
20 Board of Health would come around they would certainly have you arrested." She would say, "You dirty son of a bitch, you always liked it, and you can like it now." I said, "All right." And as soon as I started anything like that at that time, it made her sore right away and she would have the cops. If I would go away, and I would try to come back, the cops would have me arrested any time, and she had me arrested more times than I know and God knows.

Q. How many times were you arrested?

30 A. Lots of times.

Q. How many times?

A. Lots of times, a dozen or more, and while these arguments were going on, in order to save myself from being arrested and losing the day's work or losing my job, I went to the officials, like Judge Geraghty, and I used to complain to him about my troubles going on, and when she had me arrested—

The Court—You are examining the witness and have control of the examination. Just try to stop
40 him from going into all this.

Q. If she had you arrested, you would go back all right and live together?

A. Yes, for a little while, and then a day or two after it would start all over again.

Q. What would?

A. The arguments.

Q. Had you any other arguments about anything else that would come up? 10

A. Yes, towards the children.

Q. What were they?

A. I would come home nights around between half-past twelve and a quarter to one, sometimes one o'clock, all depends how the train was running. I used to find her there sometimes, and I would be going to go downstairs and she would say, "You son of a bitch, you better not take your clothes off, you better go and find your daughter."

Q. What did she mean? 20

A. What did she mean?

Q. Yes, who did she refer to?

A. Flossie Wilno and Anna Wilno, they were the two oldest at that time.

Q. How old were they?

A. Seventeen or eighteen, probably, at that time.

Q. When she would tell that, what would you do?

A. Well, what I could do, what else could I do?

By the Court.

Q. What did you do? 30

A. I went out and hunted them up, and I would pick one of the girls up, sometimes a cop would come and I would make a complaint about it.

Q. Where was the girl picked up?

A. In one of the Italian spaghetti houses on South—
By the Court.

Q. What time was it?

A. Half-past two or three o'clock in the morning. 40

Q. Where?

A. South Clinton avenue.

Q. When you say picked them up, is that that you got them or that somebody else got them for you?

A. No, the officer.

Q. And what was done after she was picked up?

A. After she was picked up one of the officers came
10 and told us that one was at the Second Precinct Police Station.

The Court—Is that material?

Mr. Rimo—No, your Honor.

Q. Did you at any time speak of that she was picked up—speak to your wife about that?

A. Yes, we were both there when the officer came.

Q. What did your wife say?

A. I said to her, "Now, are you satisfied. Look at
20 the good neighbors across the street, if you are even ashamed to go near the door for the sake of your wrongdoing; them poor children has got to suffer for what you can't do yourself." Then it was real argument—bastard, son of a bitch, whore master. It's a shame to tell the court what she said.

Q. Was that all of the things that caused the arguments, Mr. Wilno?

A. Through the children and their neglect at home, and when she got home late at nights. Lots of times I got telephone calls at the West Morrisville yards over
30 there, and lots of times the boss would let me take the bus back and investigate. And there one time I found a regular cabaret, Mrs. Wilno and Tommy West and lots of those fellows around South Trenton having a wonderful time. I said, "That's a nice, fine reception, ain't it?" I said. She said, "How in the hell did you get here, you son of a bitch?"

Q. What time was that?

A. What time?

Q. Yes.

A. I think it was a little after ten o'clock.
40

Q. What time did you get home?

A. About twelve after. The bus was right out there where I lived. It goes through there.

Q. You say this was a little after ten?

A. Yes; I got the bus. I lived on the way.

Q. On the day she stopped living with you, tell us what happened on that day?

A. That morning I got up around a little after six
10 o'clock. I had little chickens out there and I went out to take care of them. She was still upstairs there when I come in to get water for the little chicks. I had a lot of little chickens there. There she was sitting on a chair there. I come back. She said, "If you want your meal I think you better get it for the last time." I said, "Now, listen, woman, what's the use you being contrary; that's always your downfall. You make it miserable for me; you make it miserable for them poor little kids, and you
20 make it miserable for yourself, but still and all you don't get better." And I said, "I'll be darned if I can understand you in all the years I married you." She said, "If you don't like it, you son of a bitch, beat it." I said, "Well, if I beat it, woman, and then I go near that door, it will be the ruination of these two houses. There's a mortgage on it, and if the good Lord will give me strength to work out and pay the debts, I got for the sake of the kids." And she wanted to go to work there and raise hell, and got pans there and everything, and
30 one pan she threwed was between the kitchen and the middle room. I seen her pick it up and in order to avoid getting hit I bumped against the victrola. I went in the other room. She said, "You son of a bitch, that didn't hit you, but this'll hit you." And she got a press iron, and that went right through the kitchen door. I went into the kitchen.

Q. Before that?

A. Yes.

Q. The kitchen was what you meant when you said you had gone into the other room?
40

- A. Yes, the kitchen.
- Q. What time was the moving going on?
- A. Early in the morning.
- Q. Who moved, do you know?
- The Court—He hasn't said anything about moving.
- Q. Did she move anything out of the place?
- 10 A. She was helping the truck driver.
- Q. Who was the truck driver?
- A. The young fellow here; Pat, I think it is.
- By the Court.
- Q. When was this time she threw the iron at you?
- A. The same morning.
- Q. Before or after the moving?
- A. While the moving was going on. And every time she would move around I would get a chance
- 20 to talk to her. I said, "Listen, woman, don't do it for my sake, do it for the kids' sake. Stay here."
- Q. What did she say?
- A. She said, "I'll tell you, if you don't go away from me, it'll be an undertaker taking you." She said, "I'll stay here, if you don't get away from me it'll be an undertaker taking you instead of an express wagon."
- Q. What time did the moving finish?
- A. Around a little after dinner, if I remember right.
- 30 It must have been between twelve and half past. And by the way, between that time I seen there was much more stuff that she was going to take away from there, and I went to the nearest telephone, and I called up my boss and told him the circumstances—
- Mr. Frankel—That is objected to.
- The Court—Just answer the questions.
- Q. What was said by her to you, if anything, right at the last moment of the moving? What was said by you to her, if anything?

- A. I don't remember ever saying anything only, "Please, for the sake of the children, for the last time." And I even went to the door and cried. (Witness crying.)
- Q. You went to the door?
- A. Yes.
- Q. Had she left you at any time before this?
- 10 A. Plenty of times.
- Q. How many?
- A. As a rule, about five or six times a year.
- Q. How did you get her back?
- A. I used to send my sister and my mother.
- Q. And take them back?
- A. And take them back.
- Q. Back to this place 408 Bridge street?
- A. Well, yes; there are four or five different times where I'm living now.
- Q. Four or five times?
- 20 A. Yes.
- Q. Any other places?
- A. Yes, lots of times when I lived at 300 Ferry street, and when I lived at 422, I think, Lamberton street. That's right around the corner from Bridge street there.
- Q. She left you while you were at those places?
- A. Lots of times.
- Q. Where would she go?
- A. She go?
- 30 Q. Yes.
- A. When she was living at home with me she would go always to my father and mother on 120 Swan street.
- Q. Did you ever go yourself to get her back?
- A. Yes, lots of times.
- Q. Went yourself?
- A. Yes.
- Q. And when she moved out this last time in 1923, where did she go; do you know?

A. She went—I don't know the number of the street, but I know where she went, on Johnson Court; that runs off between Hamilton avenue and Broad and Second there. It goes to a three-corner lot.

Q. Did you ever try to get her back after she left?

A. No, not right away after she left. When she left that afternoon I had to go to work. You didn't
10 give me a chance to explain.

Q. You went to work that day?

A. Yes, the boss wouldn't let me off that day. He said, "We're short of men." And I had to go. I don't know, but the next morning I saw one of the kids.

Q. Where?

A. Between Bridge and Ferry on Bridge street.

Q. What time?

A. Around between ten and eleven o'clock; close to
ten o'clock.

20 Q. What took place?

A. I called the kid over. He came over. I said, "Where are you going?" He said, "No place." I said, "What's the idea of going down this way?" he said, "I come over to see you." I said, "What's the idea of coming there; afraid to go home?" He said, "No, I didn't know you were in." I said, "Didn't you have anything to eat?" I said, "I'm just getting dinner ready." He said, "I didn't have nothing since yesterday."

30 Q. From what conversation you had with the boy, did you find out anything about your wife?

A. I talked to the boy. He showed me where they were living on Chancery Court.

Q. What is the boy's name?

A. August. No, not August. I was little Johnny.

Q. How old was he at that time, about?

A. Between six and seven, I guess.

Q. What did you do?

A. I went with the boy and he showed me where they
40 were living.

Q. What took place when you went with him?

A. I went with the boy. He was leading me to Chancery Court to the house. The little son came out, the little child, and all of a sudden the little child went in the house again, and I tried the door anyway, but the door was locked. Then I seen the shutters wasn't quite closed, and I looked in the shutters there and couldn't see nobody, so I said, "Sonny, you better go
10 back, probably they won't let me in." The kid started to cry. I said, "It's no use to ask you to come back, when only in a few minutes I have to go back to work, and you would have to live in my home all alone, and that wouldn't be fair to you." And I said, "To-morrow morning you come and pay me another visit," which he did. I went to the house and knocked at the door and someone said—

Q. Never mind. Did you at any time while she was living on Chancery Court see her to talk to?
20

A. Not at that time I didn't. I did meet her—

Q. At that time?

A. No, I didn't at that time.

Q. Did you ever see her on the street anywhere while she was living on Chancery Court, to talk to?

A. I did a day or two after. I was going by there on Hamilton avenue, and I said to myself—

By the Court.

Q. You met her on the street?

A. I met her on the street, yes.
30

Q. What did you say to her?

A. As soon as she seen me I couldn't talk to her.

A. She said, "If you don't go away I'll give you another ride."

Q. What did she mean by that?

A. What she meant was she would have me arrested.

Q. Did you say anything?

A. I couldn't get a chance even to look at her.

Q. Did you see her again on the street?

A. Several times.

Q. Did you talk to her?

A. I didn't get no chance. Right away she wanted to call a cop, and "Get away from me, you dirty son of a bitch, you."

Q. Did you at any time see her after she moved to Chancery Court?

10 A. From there she moved to Mott street; just exactly what number, I don't know.

Q. Did you see her?

A. I couldn't get any chance; always the same, I knocked at the door and as soon as she put her head out, bang goes the door. I have been getting that done down to to-day.

Q. Do you know who she lived with on Mott street?

A. I couldn't tell you.

Q. Where did she move from Mott street?

20 A. I believe where she is at the present time to-day.

Q. Where?

A. 599 Roebling avenue.

Q. How do you know she lives there?

A. I went there lots of times.

Q. When was the first time?

A. I went there the day after the trial.

Q. When was the trial?

A. On December 22, 1923.

Q. '23, you say?

30 A. Yes—'24.

Q. Was there anyone with you when you went?

A. Alone.

Q. What did you do?

A. I went in there and I says to her, I says, "Listen"—

Q. You said—

A. I says, "Listen, Annie"—

Q. Say what you said.

A. I am ahead of my story.

Q. Go ahead.

A. The day after the trial, that evening of the finishing of the trial, I went to her house. At that time she was living with her father.

Q. Where was that?

A. Swan street.

Q. Swan street?

A. 120 Swan street.

Q. Yes?

10

A. I knocked at the door. My father-in-law came to the door. I said, "Good evening, Pop," I said, "Is my wife here?" He said, "She is here, and you get out of here, and here she is going to stay." This was on the twenty-second, and on the twenty-third I went to the county court to Mr. Morrison. I said, "Mr. Morrison," I said—

The Court—Never mind that.

Q. You went to Mr. Morrison?

A. Yes.

20

Q. And you had a talk with Mr. Morrison?

A. Yes.

Q. After you had a talk with Mr. Morrison, what did you do?

A. I went back.

Q. Where?

A. 539 Roebling avenue.

Q. What time?

A. It was late in the evening, getting dark, just about breaking dark.

30

Q. Who was with you?

A. I was all alone.

Q. What did you do?

A. I went to her and I said, "Listen, woman, now let's get down to business for the sake of the kids. Here comes the biggest holiday of the year. Look at all those children dressed up. Look at our kids." She call me all the vile names she could, and if I stayed much longer I was always afraid she would have a cop or do some-

thing, and in order to avoid being arrested I used to go away like a ship without a sail.

Q. What did she say to you?

A. Oh, she used the same dirty language all the time.

Q. Did she say anything about coming back?

A. She said, "I'll never come back with you, you dirty rotten whore master and bastard."

10 Q. Is that the last time you were at the Roebing avenue place?

A. No, sir; no sir; another time my mother received a telephone call from one of them, I don't know whether it was from her or one of the girls.

Q. After she received the telephone call, what did she do?

A. She called my mother up that one of the children were sick.

Mr. Frankel—That is objected to.

20 By the Court.

Q. What did you do?

A. Well, I—

Q. What did you do; did you go to see her?

A. Yes, I went there. I brought medicine there and she wasn't home.

By the Court.

Q. Who wasn't home?

30 A. My wife wasn't home at that time and my daughter, Mary—she said in the court-room here—it was snowing pretty bad. We had two or three snows—

Q. Never mind that, go on and answer the question.

A. I took my daughter along with me to hunt up her mother, and it was eleven o'clock before we located her.

Q. Did you locate her?

A. Yes.

Q. Tell us about it?

40

A. She was at Kid Murphy's home between half-past ten and eleven o'clock.

Q. Did you go to Kid Murphy's house?

A. No; they told us she had just gone home.

Q. Where?

A. At Kid Murphy's they said she had just gone home.

Q. Did you later find her?

10

A. We found her and she—

Q. Did you find her?

A. Yes.

Q. Where?

A. A few minutes before we saw her going toward home and me and my daughter got off at home and waited until she got in.

Q. What was said?

A. As soon as she got in she said, "Ha, that's nice," she said to the children, Flossie, my daughter and Mary, 20 all there, she said she wanted onions so as to make a plaster for the baby. Flossie or Mary said, "No, we haven't," they said we hadn't any onions. She said, "I'll go to the grovery store and get some." I sat alongside of the cot where the baby was, playing with her. She walked in there about two or three minutes after and there was a heavy knock on the door come. I guess she recognized the heavy knock at the door and she went to the door before any of the daughters were there. She said, "There's that son of a bitch, throw him the hell out of 30 there." She says, "He's just been convicted, and the two officers walked in there and I didn't move, and the two officers come in there and said, "How do you do, are you the father of these children here." I said, "I guess I am." They said, "What's all the trouble here." I said, "I don't know, officer; I was told to bring some medicine for this sick child, and I have been around here since eight o'clock to try and find this woman, and do you think it is all right for me to stay with my children, but if there is any arrest to be made I think that woman 40

ought to be arrested. I got the medicine here." "Go on and take him and don't let him talk that way. Get that dirty son of a bitch out of here." The officers said, "I'm sorry, friend, but I'll have to do it." I said, "Well, if that's all the trouble—

Q. Were you arrested?

A. Was I arrested?

10 Q. Yes.

A. No, the officer said he couldn't take—

Q. You were not arrested?

A. No.

Q. And you left?

A. Yes.

Q. Was that the last time you were there?

A. No, another time with Mr. Morrison.

Q. When was that?

A. During the holiday of the following year.

20 Q. What was said then?

A. I went there with Mr. Morrison. He came to my place of business; as soon as I saw him I knew right away there was something. He came in and said, "Wilno—

By the Court.

Q. No, no, no. You went down there with him?

A. Yes.

Q. And what took place?

A. What took place there?

30 Q. Yes.

A. He went in and Mr. Morrison said "Well, Mrs. Wilno, we are ready to take your kids." She said to me, "Are you going to take good care of these kids?" I said, "Now, listen, woman, I didn't just exactly come back for the kids, I came back to take you with them, too. Now, this is a good Christmas present I'm going to give you," and that's just as true as the God above. She said, "You'll never take me." I said, "That's the whole

trouble with you." I said, "I've thought that all these years," and she said—she began to use that language again, and I said, "I thought you would change, but you ain't changed a darn bit." I said, "Calm down." I said, "You spend twenty dollars a month for spuds. If you only realized it you would not have to be burning spuds. You are paying it here and I am paying it over home, and the money 10 you are spending here we could have a good time with the money and use it the same as any other woman would with a family." She said, "The only time I have a good time is when you get ditched with your automobile." I said, "That's a nice reception—the same as I always get. I thought I would find you different, but you haven't changed." Then she got up and called me things and used vile language again, and she showed Mr. Morrison an engagement ring and one thing and another, and at 20 the time she was at the police station, fixing the baby up, I said to her, after she handed it from her arms to me, as close as this post is (indicating), I said, "I hope I could grab hold of you that way instead of the kids." She said, "If I grab hold of you," and she took up the poker and I said, "Mr. Morrison, it's a nice thing you brought me in," and it was getting pretty warm at that time and she was using bad language, vile language. He said, "Wilno, I think it is no place for us. Let's go." 30 He said, "I got my belly full with that woman." I said, "I always told you, Mr. Morrison"—

Q. Never mind.

Q. Do you recall who was there at that time?

A. Why, yes, my two daughters, her sister and there was another little girl there and another boy besides my son, August, and another boy. I noticed him when he stepped up there, when you asked him. I think that was the boy.

Q. What did Mr. Morrison say outside of saying about coming for the children? Anything that you remember?

A. Yes.

Q. What was said?

A. He said to her, "Now, listen, Mrs. Wilno, now take your time," he says, "take your time."

10 Q. What did she say?

A. Well, she said—she stopped chewing the rag a little bit. She was all excited. She said, "Listen, there you are, you got a good opportunity that I don't believe you will get it any more now. Why don't you settle down and go there?"

Q. What did Mr. Morrison say?

A. That's what Mr. Morrison said to her after I drew his attention from my daughter. Then I said, "Well, there you are." Then she started to rave again. 20 I said, "Listen, Annie, for God's sake why don't you have some sense. You ain't no baby no more." I said, "You are hitting the years pretty good. It was all your own trouble." I said, "That you never listened"—

Q. What did she say?

A. As soon as she burst out a little bit she interfered with me talking and raved and cursed, and I merely got disgusted and said—

Q. Was that the last time you went to see her?

A. No, sir, I went lots of times and brought clothes 30 for my kids. There's the woman, look at her. She couldn't—

The Court—Stop that. I don't want to hear you speak in that fashion again.

Q. Is that the last time you went?

A. No, lots of times.

Q. When did you go next?

A. Every holiday that came around I used to go and sometimes I made it my business to see the kids and I missed the kids, and three times during one week I made 40 it my business to go and look for them.

Q. When you were there to bring clothes was she there?

A. No, sir—yes, she was there, yes.

Q. What would you say to her, if anything?

A. I said, "Why don't you open the door. Don't you want to talk to me or let me in to bring them? If you don't want to talk to me take it for the kids' sake." And I even made up a big Christmas basket full of stuff 10 and brought it to her.

Q. What would she say when she would open the door?

A. What do you mean?

Q. I mean, what would she say when you would say, "Open the door?"

A. She would say to get the hell out, "you dirty whore-master son of a bitch."

The Court—After this, you may just say that she used profane language or vile language when 20 she used any words of that kind.

Q. Did she at any time tell you that she would be willing to go and live with you?

A. Never.

Q. She never did?

A. Never.

Q. Very shortly after the trial did you speak with me?

A. Yes, the same evening of the trial.

Q. And from the conversation I had with you, did 30 you go to see your wife?

A. You advised me to go down—

By the Court.

Q. Did you go?

A. Yes, sir.

Q. Just answer the questions as they are asked.

A. All right.

Q. What time was it that you saw me?

A. Oh, before getting dark, there around six, I guess.

Q. What time did you go?

A. Right after I left your office.

Q. And where did you go?

A. To 120 Swan street.

Q. Whom did you see there?

A. I knocked at the door and my father-in-law came—
The Court—He has testified to that.

Q. Mr. Wilno, since the time she left you, up to the
10 present time, have you had anything to do with your
wife?

A. Never.

Q. You have not?

A. No.

Q. Has she been to see you?

A. Never.

Q. At any time?

A. Never.

Q. At your place?

20 A. No.

Q. Or anywhere?

A. Never, no sir.

Q. Or did she tell you she wanted you to take her
back?

A. No, sir.

Q. Did she ever write to you?

A. No, sir.

Q. To take her back?

A. No, sir, I would be tickled to death if she did.

30 Q. Did your daughter or anyone for her speak to you
about taking her back?

A. Only that one particular time that Mr. Morrison
was there. I'm pretty near sure that Flossie says, "If
you take the kids, pop, why don't you take mom." I said
to her, "I am too glad to take you all," I said, "but look,
if you are going to live that way it would only be the
same thing over and over again. Now, if you can sat-
isfy me that you can calm your mother, which there is
only one or two more days of the biggest holiday of the
40 year, I am only too glad to receive you."

Q. Did she speak to your wife?

A. That I don't know. As soon as something hit her
mind she would rave. She raved again and Mr. Mor-
rison grabbed me by the shoulder again and said, "Come
on, this is no place for us."

Q. And you went?

A. Yes.

Q. She has the children now?

10

A. Yes.

Q. Who was present at your marriage, Mr. Wilno?

A. Well, all my family was living at that time, out-
side of my father.

Q. Did you ever have anyone else to speak to your
wife?

A. When she used to go away?

Q. Yes, just a moment. Did you ever have anyone else
to speak to your wife for you to have her come back?

A. Yes. Last time?

20

Q. Yes.

A. Yes, I had my mother and my brothers.

Q. Is your mother living?

A. No, she died last January or this wouldn't have
happened.

Cross-examination, by Mr. Frankel.

Q. Mr. Wilno, when did your mother die?

A. Last November 11th, Armistice Day.

Q. This past year?

30

A. Yes.

Q. And what do you mean by saying that this would
not have happened if she had been living?

A. What do I mean?

Q. Yes?

A. Because my mother always used to go for her.

Q. Your mother always took her part?

A. She used to ask her to come back and she would
absolutely refuse. She absolutely used to refuse and
she even called—

40

- Q. Never mind. When is the last time you lived with your wife?
- A. When was the last time I lived with my wife?
- Q. Yes.
- A. Why, 1923.
- Q. In the year 1923?
- A. Yes.
- 10 Q. Do you recall the month?
- A. Yes, October.
- Q. When would you say that your domestic troubles began with your wife?
- A. All the time, Mr. Frankel, all the time.
- Q. The troubles really started in 1919?
- A. No, no, no, Mr. Frankel, the trouble began in 1903, after the first child was born, and I have been getting that ever since, Mr. Frankel.
- Q. Do you recall going around with a girl named
- 20 Edna?
- A. Edna who?
- Q. I don't know her last name?
- A. I don't either.
- Q. Do you remember at Prospect Heights?
- A. No, sir.
- Q. Do you remember when she accused you before Judge Geraghty in 1919 of going with this girl Edna?
- A. No, sir, she never accused me in front of Judge Geraghty.
- 30 Q. You say she didn't?
- A. She didn't.
- Q. Just after you gave her a black eye—
- A. I never gave her a black eye.
- Q. Did you ever beat her?
- A. I never did in my life.
- Q. You didn't?
- A. I never beat my wife.
- Q. You never struck your wife in 1919?
- A. Nothing like that.

- Q. Since 1919 to 1923 or between 1919 and 1923?
- A. No, sir.
- Q. You say then that it is not a fact that your domestic troubles began when you started running around with this woman, Edna, and your wife found some notes?
- A. My wife never found any notes.
- Q. That you were to meet her?
- A. She never found any notes for me to meet any
- 10 woman to my description.
- Q. You are as positive of the fact that you never beat her as of the rest of your testimony, aren't you?
- A. I never beat her.
- Q. Now, during the years I have just stated, have you ever cursed your wife?
- A. Cursed?
- Q. Used profane language?
- A. No, just like, damn it, or hell, or something like
- 20 that, which you use in every day life.
- Q. Are you engaged to be married to Loretta Pizzuti?
- A. Not that I know of.
- Q. Well, don't you know?
- A. No, sir.
- Q. You don't know?
- A. No, sir.
- Q. Is she engaged to be married to you?
- A. I am engaged to no one. I can't be engaged to anyone.
- Q. Haven't you mentioned to any person or persons
- 30 that you are going to marry the Loretta girl after this trial, or in case she signs off and lets you proceed with this case?
- Mr. Rimo—That is objected to. It seems that the answer charges adultery in two months.
- The Court—Objection overruled.
- A. I don't know.
- Q. You don't remember telling that?
- A. I didn't tell anyone.

- Q. You wouldn't deny telling that?
- A. I haven't any reason to tell them people anything like that because I am already a married man.
- Q. That is not an answer to my question. You wouldn't deny telling this to any person or persons, that you were going to marry Loretta?
- A. Would I deny it?
- 10 Q. Yes, would you deny making that statement?
- A. I never told anyone.
- Q. You never told anyone?
- A. I never told anyone.
- Q. Do you know Loretta Pizzuti?
- A. I certainly do.
- Q. You now board at the house where she now lives with her parents?
- Q. Yes, I eat there.
- Q. You commenced boarding there after an answer
- 20 had been filed in this case by Mrs. Wilno, charging you with adultery with this girl, isn't that a fact?
- A. Did I start to board there after Mrs. Wilno filed that petition?
- Q. Filed the answer to your petition?
- A. No, sir.
- Q. When did you start to board there?
- A. I started the latter part of January.
- Q. The latter part of January?
- A. The latter part of January.
- 30 By the Court.
- Q. In what year?
- A. This year.
- Q. And prior to that time you boarded with your sister, didn't you?
- A. Yes, sir.
- Q. Mrs. Onorino?
- A. Mrs. Onorino, yes.
- Q. For how long did you board there?
- A. I started to eat with her the day after my mother
- 40 was buried.

- Q. Then, soon after you went to board with her, with Loretta's parents, you filed your petition for divorce, didn't you?
- A. No, sir.
- Q. When did you do that?
- A. I went there after I filed my petition.
- The Court—It speaks for itself.
- Q. And isn't it a fact that after you found out that 10 your wife knew about your relationship with this Loretta girl that you threatened to kill your sister with a revolver?
- Mr. Rimo—I object to that. There is no testimony that his wife knew anything about it.
- The Court—I don't see of what materiality it is, at any rate. It is a very unsatisfactory way of attempting to prove your case, Mr. Frankel. You are attempting to prove your case by the petitioner. I don't think you will get anywhere with it. It seems 20 to me it is just a waste of time.
- Mr. Frankel—I intend to rebut a lot of this.
- The Court—You don't have to lay a foundation. He is a party to this suit.
- Q. How many children do you have—how many children have you had or has your wife had?
- The Court—Is that material?
- Mr. Frankel—I will withdraw the question.
- Q. Did you tell Mrs. Onorino, your sister, that you were going to marry Loretta Pizzuti? 30
- A. I never told my sister that.
- Q. Did you tell—
- The Court—Is it worth while asking those questions? It is simply wasting time.
- Q. Have you ever kissed Loretta?
- A. No, sir.
- Q. Has she ever kissed you?
- A. No, sir.
- Q. I ask you to recall an occasion, some months ago,
- 40

when Loretta was ill. Do you recall having your arm around her shoulder when she was lying in bed?

The Court—Mr. Frankel, why do you insist upon pursuing this kind of examination. You do not have to lay a foundation, and it seems to me it is wasting time.

10 Mr. Frankel—I want to show he doesn't want his wife back.

The Court—How do you expect to show it by this witness in view of the answers you are getting from him. It ought to be perfectly evident to you that he is not going to admit it. You do not have to have this witness deny those things as I have told you before. It seems to me you will be better off if you prove these things on your own case.

Q. Do you recall when Loretta Pizzuti and your daughters were arrested?

20 A. Yes.

Q. You recall bailing Loretta Pizzuti?

Mr. Rimo—That is objected to.

The Court—The objection is overruled. But I am again asking you, Mr. Frankel, why are you persisting in that line of examination when it rather prejudices your case?

Mr. Frankel—I won't ask anything further on that.

Q. Do you like your wife?

30 A. I always liked your wife.

Q. And you stated in your direct examination that you always told her to come back for the children's sake?

A. That is, including her.

Q. You told her to come back for the children's sake?

A. Yes, including everybody.

Q. Did you ever ask her to come back for your sake?

A. Not alone for anyone, that I always asked—

By the Court.

Q. Answer the questions that are asked you.

40 A. Yes, sir, that included me.

Q. When did you work for the Pennsylvania Railroad Company?

A. I started to work for the Pennsylvania Railroad Company in 1907.

Q. Were you working for the Pennsylvania Railroad Company in 1919?

A. I certainly was.

Q. In 1919?

10

A. Yes, sir.

Q. And in 1920?

A. 1920, yes, and all the way up to 1923.

Q. And did you give your wife any money during the time that you were working?

A. I always gave her money.

Q. How much money did you give her?

A. It all depends how I was working.

Q. How much of your pay did you give her?

A. I used to give her my check, seventy or eighty dol- 20
lars, sometimes a hundred and twenty.

Q. Is it a fact that she worked during that time?

A. What time?

Q. 1919, 1920?

A. There was another argument when she started to work.

Q. Is it a fact that she worked during the year 19—

A. I didn't want her to work.

By the Court.

Q. Did she work?

30

A. Yes, she worked.

Q. And didn't she work because you refused to give her any money?

A. I never refused her any money.

Q. Sure?

A. Sure.

Q. How many years did she work between 1919 and 1923?

A. What?

40

Q. Between 1919 and 1923 how many years did she work?

A. She didn't work long.

Q. How long?

A. I don't know how long.

Q. Did you state in your affidavit that she worked for three or four years?

10 A. She worked?

Q. Yes.

A. No, not that I know of.

Q. In that same affidavit you stated that she was employed in a dry cleaning establishment at the corner of Chestnut avenue and Morris avenue, is that true?

A. That's what my boy told me.

Q. This dry cleaning company is owned by your two brothers, isn't it?

A. It certainly is, yes.

20 Q. Did your brothers ever tell you that?

A. I never asked them.

Q. You stated she was making \$20 a week there?

A. Yes.

Q. How do you know?

A. That's what my son told me.

Q. What son?

A. August and Johnnie.

Q. What is your business?

A. I run a bootblack establishment.

30 Q. Where at?

A. 409 Bridge street.

Q. Any other business?

A. No, sir.

Q. How much do you earn a week?

A. At times thirty, thirty-five, sometimes less, sometimes more.

Q. There is an allegation made in your affidavit, filed in this case that you earn thirty dollars a week, from which you take out the cost of cigars and cigarettes, is

40 that true?

A. Yes.

Q. During this time you have had to pay your wife \$15 a week?

A. Yes, sir.

Q. At the time—or when did you buy an Auburn Eight Sedan car?

A. I bought that car July 7th, or the year before last. 10

Q. That was a new car, wasn't it?

A. A new car.

Q. And prior to that time, immediately prior to that time you owned two cars, a Hudson and an Essex, didn't you?

A. Old cars I had traded in for this one. I had two old cars.

Q. Did you trade the Hudson and the Essex?

A. The two old cars were traded in.

Q. That was part of the purchase price, is that it? 20

The Court—What else could he mean, Mr. Frankel?

Q. How much did your car cost?

A. Which?

Q. The Auburn Eight?

A. I give the two old cars and twelve hundred dollars.

Q. What was the purchase price of the Auburn Eight Sedan car?

A. I don't know. I didn't ask.

Q. You didn't ask? 30

A. I didn't ask.

Q. Did you have a contract signed?

A. You mean a bill of sale?

Q. Yes.

A. I have a bill of sale, yes.

Q. Have you got a contract besides the bill of sale?

A. Yes.

Q. That is, the purchase contract for this Auburn Eight car?

A. Yes. 40

Q. Have you got that with you?

A. No.

Q. Doesn't that state the amount of the price of the car?

Mr. Rimo—That is objected to.

Q. You never asked how much that cost?

A. I never asked it.

10 Q. You paid this \$1,200 in cash?

A. The—I turned in the two cars—

Q. You haven't got the contract here?

A. No.

The Court—Why ask the same questions again and again?

Mr. Frankel—I want to know how he paid this \$1,200.

Q. You accused your wife of improper relationship with Raphael Alferi, didn't you?

20 Mr. Rimo—That is objected to. There is no testimony in this case so far—

Mr. Frankel—I will withdraw the question.

Q. There is an allegation in your affidavit stating that you were suspicious of your wife with Raphael Alferi, is that true?

A. That is true.

Q. Is it true?

A. Yes, sir.

30 Q. And that was the cause of your trouble between you and your wife?

A. Well, that has some, Mr. Frankel.

Q. You are engaged in the liquor business as well there, aren't you?

Mr. Rimo—That is objected to.

The Court—Objection overruled.

Q. (Stenographer repeats the question.)

A. No, sir.

Q. You are not?

A. No.

Q. Have you ever sold liquor in that place?

A. No, sir.

Q. Do you have any there now?

Mr. Rimo—That is objected to.

The Court—It is objectionable. I won't let you go any further. You are not getting anywhere on these questions, and you will persist in taking up the time to ask them. If there is anything that is in 10 the least beneficial to your side of the case you may ask it. If not, it would be much better to prove your own case by your own witnesses.

Q. Did you have a hot-water system put in your place about a year ago?

A. It has been more than a year ago.

Q. More than a year?

A. Yes.

Q. How much did you pay for that?

A. \$380.

Q. Cash or check? 20

A. I made it in three payments—two or three.

Q. Cash or check?

A. No, cash.

Q. What bank do you deal with?

A. I don't deal in any of them. I don't have anything to deal with.

Q. Did you ever deal in the Mercer Trust Company?

A. That is when they held my mortgage.

Q. Did you ever have a bank account in the Mercer 30 Trust Company?

A. Yes, a saving bank.

Q. Have you got that now?

A. No, I ain't got anything. That has been a good many years ago, since I bought the house in 1919.

Q. Did you have a bank account in the Trenton Trust?

A. No, sir.

Q. Didn't you?

A. No, sir, nevet, no other bank in the city of Trenton besides the Mercer Trust, and that was during 1919.

Q. That's all?

A. Yes.

Q. In your affidavit you state, "I admit that my wife worked at a dress factory to earn for herself, not only for the three years as she says, but for a much longer
10 period, and all during the time she worked I begged of her not to because I was giving her all the money I earned for I was working constantly," is that true?

A. That she worked over four years?

Q. Yes.

A. I never said that she worked over four years.

Q. Did you sign any affidavit and have it filed in this cause?

A. Not to my knowledge.

Q. You didn't have?

A. I never did, not to my knowledge.
20

The Court—Well, what he signed, he signed, I suppose.

Q. Now, the petition for divorce which you signed, and is filed in this case, says that your child, Annie Wilno, is fourteen years of age, is that correct?

A. What?

Q. At the time you filed that in this case, it stated that your child, Anna, was fourteen years of age, was that correct?

A. I don't remember, it might have been a misunderstanding of the age—their ages are there.
30

Q. And not that she was seven years old.

A. That is where the mistake might have come in.

By the Court.

Q. Is she seven years old?

A. She is around that neighborhood.

The Court—What is the purpose of this?

Mr. Frankel—I would like to get the exact ages.

The Court—If that is the purpose you may ask
40 your client when she comes on the witness-stand.

Mr. Frankel—I also want to show he has little interest in the family when he doesn't know their ages, according to the affidavit.

The Court—That would be a matter of argument.

Q. Did you ever send James Wilno to see your wife in an endeavor to have her withdraw from contesting this case?
10

A. No, sir.

Q. And make a settlement offer of \$500 for the house?

A. No, sir.

Q. Now, were you in Loretta's house when she was served with a subpoena last Saturday?

A. Yes, sir, I just happened to be in there at the time the man come.

Q. What time of day was that?

A. Just exactly twelve o'clock.
20

Q. What were you doing there?

A. I was just opening the door as this young man was bringing in a subpoena, before I had the door closed.

Q. Is Loretta Pizzuti in the court room?

A. Yes.

Q. Did you talk to Mr. Pearson in the course of conversation, who served you with the subpoena, and ask him if he would take the subpoena back?

A. No, sir.

Q. And say he never served her?
30

A. No, sir, I never said anything of that sort.

Q. Did you say anything to him?

A. No, sir, we talked, "How are you making out," or something like that, and he said, "Well, it used to be pretty good, serving subpoenas."

Q. Did you tell him to name his price if he would take it back?

A. I did not, no, sir; no, sir.

Q. Now, did you say—did you say that a day after
40

the desertion trial you went to see Mrs. Wilno and asked here to come back?

A. That same night.

Q. Was it on Roebing avenue?

A. On Swan street the same evening, right after the trial—120 Swan street, right after the trial.

10 *Ferdinand K. Miller*, a witness produced on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Miller, what is your business?

A. Barber.

Q. Where do you live?

A. 262 North Warren.

Q. Do you remember a trial between the State of New Jersey and John Wilno that was before Judge Marshall?

20

A. Yes, sir.

Q. For desertion?

A. Yes.

Q. Do you remember the wife testifying in the trial?

A. Yes, sir.

Q. And do you remember a question being asked her if she would be willing to live with her husband if the husband asked her to come back?

A. Yes.

30 Q. Do you remember what she said?

A. Why, she said, "Why, I wouldn't live with you if you were the last man on earth?"

Q. Do you remember the husband, John Wilno, being asked if he would take his wife back to live?

A. Yes.

Q. And do you remember what answer he gave?

A. He said, "Yes."

Q. Do you remember whether, during the trial, she uttered any profanity?

40 A. Yes.

Q. Against whom?

The Court—Is that important, Mr. Rimo?

Mr. Rimo—That is all.

Cross-examination, by Mr. Frankel.

Q. You were a member of this jury that heard this case?

A. Yes.

10

Q. In the Quarter Sessions Court?

A. Yes.

Q. How long was the jury out before they brought in a conviction?

Mr. Rimo—I object to that.

The Court—Is that important?

Mr. Frankel—All right.

Q. You stated on direct examination that she said, "I wouldn't live with you if you were the last man on earth?"

20

A. Yes.

Q. You say she said that?

A. Yes.

Q. Are those her exact words?

A. Well, yes, I believe they are.

Q. Are you positive?

A. Well, on that order.

Q. Was her husband questioning her at the time she said that?

A. No.

30

Q. Was this said in response to a question of Mr. Rimo or Mr. Cougle?

A. Mr. Rimo.

Q. By Mr. Rimo?

A. Yes.

Q. Do you remember her giving some reasons, being afraid to live with him?

A. Yes, sir, she gave lots of reasons.

Q. Tell us some of the reasons?

40

A. It has been so far back I can't remember unless you told me some of them.

Q. Did she say, "He was only using me as a house rag," do you recall that?

A. Yes, I believe she did say that.

Q. Do you recall her saying she was thrown out?

A. No, I don't recall that.

10

Petitioner rests.

Mr. Frankel—I desire to make a motion to dismiss the petition.

The Court—Do you rest?

Mr. Frankel—No, sir.

The Court—I can't entertain your motion unless you rest your case.

20 *Anna Wilno*, the above-named defendant, being duly sworn in her own behalf, testifies as follows:

Direct examination, by Mr. Frankel.

Q. Where do you live?

A. 539 Roebling avenue.

Q. The petition for divorce filed by your husband states that you deserted him in December, 1924?

A. Yes.

Q. Is that true?

A. No, sir.

30 Q. You didnt do that?

A. No, sir.

Q. And when is the last time you lived with your husband?

A. October 7.

Q. What year?

A. 1923.

Q. October 7th, 1923?

A. Yes, sir.

Q. Will you tell us about that, just what happened?

40 A. October 7th, 1923, was on a Saturday afternoon.

About four o'clock, on the twenty-eighth day of September, my daughter Flossie was peeling potatoes. I was getting ready to put the frying pan on the gas stove and my husband come in and he called me in the dining-room. He says, "Come here, Annie." I went to talk to him. All right. I went in there and he said, "Listen, Annie, now I am going to tell you something I know it will make you feel bad." He said, "The best thing 10 for you is to get a house and move." I said, "What did I do to you?" He said, "I have somebody better than you. I might as well tell you right now." I said, "Listen, if you don't care for me you don't have to live with me. There's the door, you can go where you please." He said, "You heard what I said. If you want to stay here you got to pay me \$20 a month or get out." I said, "Remember, you're not chasing a dog out, remember you are chasing the mother of your children." He said, "I am telling you in a good way. Don't let me 20 tell you the second time. I'll give you a shove out in the street." I said, "If you have the heart to throw me out just take me and put me out," and he got hold of my arm and dragged me as far as the front porch. I held the door frame. Then he threw me off onto the front porch and he walked into the house. I stayed outside for a little while and I was walking back to the kitchen and I said to my daughter, "Listen, I'm going out to look for a house—

The Court—Never mind what you said to your 30 daughter.

Q. Just tell what you did?

A. I said, "Maybe your father"—

Q. Don't say what you said to your daughter, tell just what you did?

A. I said, "I'm going out to look for a house"—

By the Court.

Q. Did you go out and look for a house?

A. Yes, sir, I went out and looked for a house and I got a room at No. 5 Chancery Place, just to 40

sleep, a place to store my furniture, what belonged to me.

Q. Is that where you and your children moved to?

A. Yes, we moved on Saturday, the following week.

Q. What day?

A. The 7th of October.

10 Q. You stated that this conversation with your husband took place on the seventh of September; what was his conduct towards you during that week?

A. He never spoke to me. He never spoke to me even after I moved out, around the house, but he would ask my children if I had already found a place and when I was going to get to hell out.

Q. Were you present when he asked that?

A. Yes, sir.

Q. Did he do anything to you?

A. He would spit at me every time I passed him.

20 Q. Spit at you?

A. Yes.

Q. Did he do anything to the furniture or anything else?

30 A. I got the house the same day, see, on the Saturday. That Sunday I took some of the furniture in the dining-room, and he comes in the dining-room and he said, "I wish you would get this furniture the hell out of here." He said, "I'll give you ten dollars if you will get out to-day." I said, "You better keep that ten dollars. Remember," I said, "You are not throwing any dog out. You are throwing the mother of your children out of roof and board."

Q. Did he say anything further to you?

A. He wouldn't speak. He wasn't speaking to me, but every time he passed me he spit at me, and after I was near the sink any time and he got a glass of water he would throw the leaving of the glass of water in my face.

Q. Did he call you vile names during that week?

40 A. He wasn't speaking to me at all.

Q. Did he address your children, speaking about you; did he use vile terms?

A. Not just at that time. He just wanted to get rid of me and the family.

Q. Not at that time?

A. No.

Q. Did he help you to move?

A. No, sir, he sat in the kitchen smoking a pipe. 10

Q. Did he say anything at the time that your furniture was being moved out?

A. He said, "I'll be glad when you get out of here so I can clean up my home and live by myself."

Q. Did he handle any of the furniture?

A. No, sir.

Q. Did he take the picture frames off the walls?

A. Yes, above the piano was some of my relations pictures—sister—and he said, "Don't forget and take this along with you, for I don't want nothing that be- 20
longs to you," and he takes it off the wall and throws it on the parlor floor.

Q. Did he injure it?

A. Broke the glass out of it.

Q. Did your husband, at any time since October 7, 1923, ask you to come and live with him?

A. No, sir.

Q. Did he at any time after that date tell you he had made a home for you and the children?

A. No, sir. 30

Q. He didn't say that?

A. No, sir.

Q. Now, during the time—that is, the whole period of the time you lived with him, what was his conduct towards you, good or bad?

A. Bad, very bad.

Q. Well, when did he start becoming—when did his conduct become very bad; can you tell us the year?

A. 1919.

Q. And will you tell us of any specific instances? 40

A. Yes, he was running around with a woman that lived at Prospect Heights.

Q. Do you know her name?

A. Here name was Edna, which I found notes in his pockets to meet her.

Mr. Rimo—Objected to.

Q. Do you know what her name is?

10 A. No, but she was married and had one child—

The Court—Wait—

Q. Do you know her?

The Court—How is this material?

Mr. Frankel—On the question of cruelty.

The Court—What cruelty do you mean?

Mr. Frankel—We allege in our answer there was no desertion, and allege that he was cruel to her all this time.

20 The Court—Well, suppose he was cruel, what do you want to show?

Mr. Frankel—I want to show that he was not sincere when he made the statement on the witness-stand that he wanted his wife to come back.

The Court—She says that he never made any such statement.

Mr. Frankel—He made the statement of the fact that he asked her to come back.

The Court—And she says he didn't.

30 Mr. Frankel—I thought this would corroborate it. I have a lot to go into on this. If your Honor desires me to go ahead as to cruelty, I will do so. And if your Honor wants me to not do that I will no do it, but I thought I should go into this to show what his conduct was. He says he never beat her, and I want to rebut that testimony.

40 The Court—She says she is the one that did the actual leaving, and she did so because he threw her out on this day. She didn't leave because of his conduct that made it necessary for her to leave except that one instance. You are not seeking a

divorce on the ground of desertion or any other ground.

Recess until two o'clock.

After recess.

Mr. Frankel—If it please your Honor, I was talking about the advisability from my viewpoint 10 of permitting extreme cruelty to be brought into this case, because, as I see it, the petitioner alleges desertion. Now, we want to show, and we have to show, I believe, especially in view of the fact that we are asking for alimony—

The Court—Who is asking for alimony?

Mr. Frankel—Mrs. Wilno, the defendant, is asking for alimony, that she is justified in being away from him because he forced her to go, and that was the result of a course of conduct—

20 The Court—Where do you ask for alimony?

Mr. Frankel—After the answer was filed there was a petition for alimony filed right after the answer, and she alleges this cruel conduct to show how she was forced to go away.

The Court—That was on an application for alimony *pendente lite*. That has been disposed of.

Mr. Frankel—I felt it was disposed of as far as *pendente lite* was concerned and if Your Honor thought she was entitled to alimony at the time of 30 the trial she could have that relief as well.

The Court—How can I; she has filed no bill. The only issue here is whether this man is entitled to a divorce.

Mr. Frankel—Then I can't ask for alimony at this time?

The Court—I think not.

Mr. Frankel—Then to justify her from being away from her husband's home I felt I would have to show this extreme cruelty during these four 40

years which culminated in his forcing her to leave their home.

The Court—I can't agree with you. Your objection will be noted.

Q. Has your husband ever been to see you and asked you to return to him since October 7, 1923?

A. No, sir.

10 Q. Has he ever sent anybody, that is, has anybody ever come to you, stating that they were sent at his request to ask you to return to him?

A. No, sir; not as I know of.

Q. They didn't?

A. Not as I know of.

Q. Did you ever receive any letters from him?

A. No.

Q. Asking you to return?

A. No, sir.

20 Q. Was your husband ever a boxer?

A. Yes.

Q. What was he known as in fistic or boxing circles?

The Court—Strike it out.

Q. Just prior to October 7, 1923, did you sleep with your husband in one bed?

A. No, sir.

Q. You did not?

A. No.

Q. Tell us about that? Tell us why?

30 The Court—What is the purpose of that?

Mr. Frankel—To bear out the fact that he didn't want her around there. To show this treatment of her at that time. I am asking only about this time previous to this date.

The Court—Well, that is a great length of time.

Q. Tell us whether, immediately, that is to say, whether, within a week or two, prior to October 7th, 1923, whether or not you slept with your husband?

40 A. From the time he asked me to leave the home until the time I moved, he never wanted me in his bed.

Q. He never wanted you?

A. No.

Q. What do you mean by "He never wanted you;" did he tell you that?

A. He told me that bed was for him, and I had to get my big boy to sleep with the father and I lay in my room with my daughter on the cot.

Q. Did he refuse to leave you in his bed? 10

A. Yes.

Q. For a week prior to October 7, 1923, did he eat your meals?

A. Certainly he eat my meals all that week, from the time he ordered me out of the house until the day I moved.

Q. Did you throw an iron at John Wilno?

A. No, sir.

Q. On November 7th?

A. No, sir; no, sir. 20

Q. Did you throw anything else at him that day?

A. He wasn't talking to me during all that time, so how could I throw the pot or an iron at him?

Q. Did your husband ever request you not to go to work?

A. No, sir.

Q. Never?

A. No.

Q. Did your husband give you his pay while he was working? 30

A. No, sir.

Q. Did he give you any money?

A. He would go out and buy the groceries himself, but he never give me a penny. I never even seen his checks.

Q. Did he buy your clothes for you during the time you lived with him?

A. No, sir.

Q. Didn't buy your clothes?

A. No. 40

Q. Why did you move on October 7th, 1923?

A. Why did I move?

Q. Yes.

A. I was forced out of the house.

Q. Just what do you mean by that?

A. He says to me, "If you don't get out of here," he says, "I'll kill you some day, so you might as well move."

10 Q. Were you afraid to stay there?

A. Why, certainly I was afraid to stay there. He threatened me.

Q. Had he ever threatened you before?

A. Yes.

Q. With what?

A. With a crow bar?

Q. Anything else?

A. And pots and pans, the 12th of May, 1923.

20 Q. Did he ever actually strike you with any of those things?

A. Yes, sir; he cut the back of my head with a kettle on the stove.

Q. Did you ever threaten your husband?

A. No, sir.

Q. You never did?

A. No.

Q. Did you ever throw any pots and pans at him?

A. No, sir; no, sir.

Q. Did your husband ever have any deadly weapons?

30 A. Yes.

Q. Any deadly weapons in the house?

A. Yes.

Q. What?

A. He had a revolver and a razor he shaved himself with.

A. Did he ever threaten you with the revolver?

A. He did with the razor but not the revolver.

Cross-examination, by Mr. Rimo.

40 Q. Mrs. Wilno, May the 12th, that you spoke of, would you mind telling us what occurred on that day?

A. Yes.

Q. What happened?

A. A week after my daughter married, it was on a Saturday, a man by the name of Mr. Thompson had a saloon at the corner of Lafayette and Warren, and my husband had a gallon of whiskey and he paid him \$30 for it. That was that week and he come back to ask him if he wanted to buy another gallon, and I happened 10 to go to the door and he wanted my husband and he comes in that afternoon and he had bought some tripe and he wanted me to cook it and he said, "I'll be back in half an hour." The half hour came and the tripe wasn't done. He says, "How long more do I have to wait." I said, "You'll have to wait until it's cooked." He come back with drinks in him and I said, "Listen, Johnnie, why don't you stop drinking." I said, "With that money you are taking, \$30 a week for whiskey, can't you give that to me to buy clothing for 20 my children?" He said, "I wouldn't give you a penny." He said, "If you want money I'll take you to some place to peddle for some." I said, "I have been married twenty years. I am your wife." My daughter says, "That's a nice way to talk to me in front of mom, or to mom in front of me." He said, "You shut up and mind your business." He took a pot off the gas stove, I was just making coffee, and cuts my head open, and a woman who lives in Brooklyn now, she was confined 30 four days and she got up out of bed.

Q. What about that woman?

A. She moved to Brooklyn.

Q. Go ahead?

A. Somebody in the neighborhood called my husband's people up and my mother-in-law and Jim Wilno came over right away and the back of my head was bleeding and Jim, my brother-in-law, said, "If I ever done that to my wife she would have me arrested right away," and he kept on drinking whiskey. His mother said, "Why don't you stop that." He said, "No, nobody is 40

going to stop me," and Jim took the revolver and he said, "I'll take that home." He pretended to go to the toilet so he turned around and he come out of the toilet and he started for me again and Charlie and Jim come in and my mother-in-law said, "Oh, then, it's you that started the trouble all the time, it isn't your wife," so then they went home.

- 10 Q. What did you do on that day?
 A. Nothing at all, Mr. Rimo.
 Q. What time of the day was it?
 A. 4 o'clock in the afternoon, just preparing supper.
 Q. Now, you say he never bought you any clothing?
 A. No, sir.
 Q. He didn't?
 A. No.
 Q. Don't you remember him buying you a pair of shoes?
 A. That was all he bought me. The night I married him, that was on the wedding day. That was the second pair of shoes.
 Q. Don't you remember him buying you a dress?
 A. No, sir. I went to the rag shop and fixed them over for my children.
 Q. Is that all?
 A. No, sir; he never gave me one penny.
 Q. He didn't give you anything?
 A. No, sir; not a thing.
 30 Q. All your life, Mrs. Wilno?
 A. No, sir.
 Q. Why did you say he never gave you any money, never gave you a penny?
 A. He didn't. He gave me \$3 or \$4 for—
 Q. Then he did give you some?
 A. That.
 Q. Why do you say he never gave you a penny and then say he gave you \$3 or \$4?
 A. For insurance.
 40 Q. Didn't he give you money to buy food?

- A. No, sir; he used to buy the food.
 Q. Himself?
 A. Yes, sir.
 Q. Do you remember testifying in the trial before Judge Marshall that he had been giving you money until you had an argument, and then he decided to buy the food himself?
 A. No, sir; I said no such thing. 10
 Q. Are you sure?
 A. Yes.
 Q. Sure about that?
 A. He never give me a penny, the only thing was \$3 or \$4 to pay the insurance.
 Q. How much did he make while he was working?
 A. \$60 or \$70 every month on the Pennsylvania Railroad.
 Q. Wouldn't he tell you how much he made?
 A. No, sir; only one time he gave me his check. I 20
 don't remember what it was. He asked me to pay his mortgage and he endorsed on the back of the check, and he wouldn't cash it and I spent 75 cents. I never forgot that day, and I come home I couldn't just remind what I had done with the 75 cents, and he gave me a good beating for spending that 75 cents.
 Q. What day was that?
 A. I don't remember. That was a mortgage paid Mr. Stone when there was \$400 balance left.
 Q. Where did he beat you? 30
 A. I don't just remember, but I know he beat me.
 Q. If you remember being beaten, you certainly remember where you were beaten, don't you?
 A. He has beaten me all over my body, and I can't remember that just where he beat me. He used to throw water at me and punch me with his fists in the face and my body, too.
 Q. What did you say that day?
 A. What did I say?
 Q. What did you say or do? 40

A. I don't remember how much I bought out of the 75 cents, but I spent 75 cents.

Q. You had left him before, hadn't you?

A. No, sir; every time I left the home he put me out; every time.

Q. How would you get back?

A. He went to Judge Geraghty three times and asked
10 him, that was in 1919, during before Christmas, that was November or October—November, and he asked Judge Geraghty if I wouldn't give him another chance, that he would try to do better by me. I said to Judge Geraghty, "I am kind of afraid, because he has made that promise to me so often, and he will do the same thing over again." For awhile he didn't and then he would start over again. He said to my husband, "You ask me to send for your wife, you heard what she said, I can't do nothing else." Then it was one Christ-
20 mas and he sent for me again, the officer came for me at 120 Swan street. I went to Judge Geraghty, he said, "I am sorry, but Mr. Wilno asked you to come in front of me to ask you to come back with the children, would like to have you back home for Christmas. I said, "All right, I will do anything for the sake of my children, providing he treats me white." He said, "All right, you go back for my sake and if he don't do right, you come back to me. I had a baby sick with pneumonia and I couldn't go that week, but my clothes went back
30 home and I went about two weeks after the baby got better.

Q. You went home?

A. Yes.

Q. You had him arrested every once in a while, didn't you?

A. No, I never had him arrested, Mr. Rimo.

Q. You never had him arrested?

A. No, sir.

Q. Sure about that?

40 A. I didn't.

Q. Weren't you in the Police Court a number of times?

A. The time you represented me in 1922.

Q. Didn't you have him arrested then?

A. No, sir. Prosecutor Geraghty had him arrested himself; that's the time he wouldn't open the door when we come with the potatoes and he gave me a black eye and put me out. 10

Q. Didn't you complain to the Judge?

A. I'll tell you how this happened. "I went back that night; wait a minute, no, he put me out, he give me a black eye, after Mr. Moody and Mr. Hort left the house, that was in 1921 or 1920 at 465 Bridge street; 467 rather. And after Mr. Moody and Mr. Hort went out he give me a black eye; he give me a beating, after calling the cops. He opened the door and he said, "Come out and take your baby." I did and I come back to Judge Geraghty with the baby in my arms and Judge
20 Geraghty was there. I said, "Judge, what am I going to do with that man of mine, he beat me and ordered me out of the house with the baby?" I had my face down. He said, "Put your face up." He said, "He give you a black eye." I never opened my mouth. He said, "Go in the other room," and Judge Hulme swore out a complaint and Mr. Hort come after him at 5 o'clock. I said, "Where shall I go to, back to my children?" He said, "Yes, that's where you belong." I went back and Mr. Wilno was fixing his lunch; he was
30 working from 7 to 3. He said, "Why did you come back?" I said, "I come back by order of the law," and I am going—

Q. You did remember making a complaint?

A. Yes.

Q. You did make a complaint, then, do you remember that?

A. Yes, that is when I come back.

Q. Did you want to go back?

40

A. I wanted to go back with him and I said, "And you gave me separation papers and charged me \$15 for it."

Q. Did you go back with him?

A. After a month I went back, and I went back for the children's sake, because what's the truth is the truth.

Q. At this trial, before Judge Marshall, did you re-
10 member being asked whether you would go back to live with your husband?

A. By you.

Q. What was your answer?

A. I said, "I will in one way, but in another way I don't think he will take me back," and you asked me if I said, He has made a remark that he would use me for a housewife.

Q. Do you remember saying that you wouldn't live with him again?

20 A. No, sir; you never asked me after that.

Q. Did you say it?

A. No.

Q. Do you remember your husband being asked during the trial—

A. No, sir; he was never asked during the trial to go back and live with me, because you went to him and said to him, "Talk sensible, don't talk foolish," right after you left talking to him. I don't know what you asked him, but that's the answer you gave him.

30 Q. What do you mean?

A. That's the answer you said.

Q. Do you remember he was asked on the witness-stand if he would take you back to live?

A. I didn't ask him on the stand and I didn't hear you ask him. I had enough children by him for him to take care of me.

Q. Would you have been willing to go back with your husband?

A. If he would ask me.

40 Q. You would?

A. Yes.

Q. Do you remember the time Mr. Morrison was at your home on Roebing avenue?

A. The 26th day of February, 1926.

Q. February 26th?

A. Yes.

Q. Did your husband come then?

A. No, Mr. Morrison came first, and he come ten 10 minutes after.

Q. But your husband was in the house?

A. Yes, I was sick five months laying on a cot at that time.

Q. Do you remember what he said to you?

A. I had said to my daughter a day before—

Q. What did Mr. Morrison say?

A. He said, "Good morning, Mrs. Wilno, how do you feel?" I said, "I was bad." I said, "I have rheumatism in this leg." He said, "I was just over to Johnnie's, 20 and he said I asked him about coal for the children because I didn't want to give him the children." I wanted him to get coal for the children and I was complaining. I was complaining about the support and Mr. Morrison said, "Johnnie said he would take the children and provide for them," and I said, "Why should I let him have the children, I am his wife?" He said, "He will be here in 10 minutes and then he came in." He said, "Johnnie, your wife said she would like to have heat for her, too." He said, "No, I am not going to give 30 her big daughters heat, let them go to work." I said, "I will let him have the children, but I want to see them get the same treatment they get from me." He said, "No, no, you can't come around my place." So then, I said, "All right, I will let him have the baby," the others were ready. I said, "Flossie, my daughter," I said, "get your brother and get his clothes on." She put the clothes on the baby and the baby goes to her father. In the meantime while he had the baby in his hand, he said, "If your mother had a heart, she wouldn't 40

let me have the children." I stepped out of the cot and I said to my husband, "I had a good heart to keep these children and as long as you made that remark, that I haven't got a heart, you can't have the children," and I said, "get out of here before I throw you out," and Mr. Morrison said to him, "You spoil your own game, John. We might as well go;" and out they went.

- 10 Q. You were not willing to have him?
 A. I never refused.
 Q. You didn't refuse?
 A. No.
 Q. Did you ask him?
 A. Why should I?
 Q. Why didn't you ask him then?
 A. It was his place to ask me, he put me out.
 Q. You told him to get out?
 A. Yes.
- 20 Q. Why did you tell him to get out?
 A. He told me I didn't have no heart, that is what the children—
 Q. If you were so anxious and if you were willing at all to live with your husband, didn't you feel at that time that you have spoken of, it would be a good thing to ask him to take you back?
 A. I wasn't asked by Mr. Morrison, at that time that he had come to ask to hold that conversation with me, and I would have told him "yes."
- 30 Q. Do you mean if Mr. Morrison had asked you?
 A. Yes.
 Q. Why did you have to be asked by Mr. Morrison before you said how you felt?
 A. Because I know he didn't want me back.
 Q. Your husband?
 A. Yes.
 Q. Why didn't you, at least, ask him?
 A. It wasn't my place to ask him. He put me out, he said "he had somebody better than me."
- 40 Q. And that is the way you have felt ever since?

- A. No, but I felt that he had no room for me.
 Q. You felt that way?
 A. Yes.
 Q. Do you remember him saying to you that morning, when Mr. Morrison was there, "now, for the children's sake, it is getting near the holidays—"?
 A. No, sir.
 Q. What did he say about the holidays? 10
 A. He never said a word, Mr. Rimo; don't let him tell you he said "for the children's sake let's go back," if he had, I would say "all right, if you feel that way, provide us a home."
 Q. Do you remember him telling you "that had been your downfall, that is why things have been that way?"
 A. No, sir, he said "I always stayed for my children," and I think every mother who brings them into this world should stick by them, mother and father, too.
 Q. Now, I ask you, "Didn't you feel you could have 20 then near the holidays got together?"
 Mr. Frankel—That is objected to.
 The Court—Objection overruled.
 A. After his mother died, I was a good enough woman to—
 The Court—Answer the question.
 Q. (Stenographer repeats the question.)
 A. Which I did ask him Christmas to come and have dinner with his family. I asked my daughter to ask my sister to ask my husband to come and have dinner with 30 his family.
 Q. You didn't ask him?
 A. I didn't at that time because it was after my mother-in-law died.
 Q. You didn't ask him at all, did you?
 A. He told me he wouldn't take me back for a gift. I didn't ask him, he asked me in front of Mr. Morrison.
 Q. You are positive of that?
 A. Yes, my daughter said, "Why don't you take mom, if you take the children." I said, "We went to 40

409 together and I want to go back at 409 together," and he said, "I won't take you mother back as a gift."

Q. That morning, while Mr. Morrison was there, you did considerable cursing, didn't you?

A. No, sir.

Q. You didn't?

A. No.

10 Q. Not at all?

A. He did to me.

Q. But you didn't curse at all?

A. I wish you would ask Mr. Morrison what kind of language I used.

The Court—Answer the question.

Q. What did he say?

By the Court.

Q. Did you or did you not curse him?

A. No, sir.

20 Q. Do you remember Mr. Morrison saying to Mr. Wilno "that he wasn't making much headway and that they had better leave?"

A. No, sir, Mr. Morrison didn't say that.

Q. What did he say?

A. Mr. Morrison?

Q. Yes.

A. He said, "Johnnie, you spoil your own game," we might as well go," and out of the hall they went.

Q. Who was present at that time?

30 A. My daughter Flossie and my daughter Mary and my little girl Annie and my son August happened to come in and Mr. Morrison asked him if he wanted to go with his father, and he went out of the hall.

Q. Your son is very friendly with this young man, this boy?

A. Yes.

Q. Didn't this boy come into your house quite often?

A. He was always in my home long ago, but not lately.

40 Q. Wasn't he there the day Mr. Morrison was there?

A. No, sir, he is lying, Mr. Rimo.

By the Court.

Q. Answer yes or no.

A. No, sir.

Q. Do you remember telling this young man that you would never live with your husband again as long as you live?

A. Why should I hold a conversation with— 10

Q. Did you?

A. Why should I?

By the Court.

Q. Did you or didn't you?

A. No, sir.

Q. Did you ever use any profane language against your husband?

A. No, sir.

Q. At no time?

A. No, sir, he was bothering me at that time that I 20 had to use profane language against him.

Q. The morning Mr. Morrison was there, did you pick up anything at all to throw at or strike at your husband?

A. No.

Q. Are you sure?

A. No, sir, I didn't have a thing in my hand.

Q. Where was this conversation that took place between you?

A. In my dining-room, where I had my cot. I only 30 had one stove, and I couldn't afford to have the two stoves.

Q. Did you ever use the language "Bastard?"

A. At that time, with Mr. Morrison, no, sir.

Q. Did you ever use it?

A. He used it to me, "black bastard."

Q. I am asking you did you ever use it?

A. No, sir.

Q. Did you ever use the term "son of a bitch?"

A. No, sir.

- Q. To your husband?
 A. No, sir.
 Q. At no time?
 A. No, sir.
 Q. Do you use that language?
 A. No, sir.
 Q. Do you remember that Mr. Kirkham—
 10 A. Yes.
 Q. The county detective was present in the court room when the trial was going on?
 A. Yes, sir.
 Q. Now, you remember that?
 A. Yes.
 Q. And do you remember this gentleman that was on the stand to-day, Mr. Miller, the jury—?
 A. Yes, I remember seeing him there; I seem to recognize he was on the jury.
 20 Q. Now, when you lived on Chancery Court, do you recall whether your husband came there at any time?
 A. No, sir, never came near my door.
 Q. You never saw him?
 A. No, sir.
 Q. Sure about that?
 A. Yes.
 Q. Did you ever see your husband on the street?
 A. No, sir.
 Q. At any time?
 30 A. No, sir.
 Q. No time at all?
 A. No.
 Q. Did you ever see him anywhere?
 A. No, sir.
 Q. Didn't you see him in front of his place of business on Bridge street?
 A. When?
 Q. After the trial?
 A. No, sir.
 40 Q. You are positive of that?

- A. No, sir, I never went nowhere near his place, positively sure.
 Q. Don't you remember, Mrs. Wilno, that you went there and you started to fight with him?
 A. No, sir.
 Q. And you said "you would get him?"
 A. No, sir.
 Q. What did you say? 10
 A. I never went near his place.
 Q. You went in that neighborhood quite a bit, didn't you?
 A. I have a right to walk the street, don't I? I have a right to walk the streets of Trenton.
 Q. And you went in that neighborhood quite a bit, didn't you?
 A. No, not often; I was working making my living.
 Q. Did you go in that neighborhood at all?
 A. At times I was down there when somebody die I 20 would pay them a visit, but I never went near his place to bother him.
 Q. You didn't go near his place?
 A. No.
 Q. Right after the trial did you go to live with your father?
 A. No, I never lived with my father; I lived on Roeb-ling avenue.
 Q. The very day after the trial, where did you go to live? 30
 A. I don't remember.
 Q. You don't remember?
 A. At 539 Roeb-ling avenue; I lived there three years, going on four.
 Q. Do you remember being at your father's house?
 A. When?
 Q. The day after the trial?
 A. No, sir.
 Q. Do you remember your husband going to your father's house? 40

A. No, sir.

Q. Didn't you father tell you?

A. My father told me he had come around to the house, my brother's house; my father told him to get off the porch; he came to see me.

Q. When your father told you he came there and wanted to see you, did he tell you what he wanted?

10 A. My husband never talked to my father to tell him anything that night.

Q. Did you make it your business to see what your husband wanted after your father knew he was there?

A. No.

Q. No?

A. No, I said "if anybody wants to see me I live at 539 Roebling avenue." He knew where to come other times, Mr. Rimo.

Q. What do you mean?

20 A. He knew to come when he—the 18th of March, 1926.

Q. Oh, then he did come?

A. Yes, sir, he came to my house.

Q. He did come?

A. Yes.

Q. And what was done then?

A. He knocked at my door, it was about half-past six, that was after he refused to give me the coal for the children; I was lying on a chair. I said to my little girl, "I think I heard a knock at the door," and the little girl goes to the door. He said, "Is mom home?" and she said, "It's pop." I said, "Ask him in." He said, "Good evening, everybody." I said, "Good evening," and I said "sit down." He said, "I'll stand up a little while." I got one of my chairs to hand him a chair and I said, "What brings you in here to-night?" And I asked him again, and I asked him again, and he didn't answer. He said, "Old woman, my brother asked me to see if you would come home, that they can't live that way."

40 My daughter Mary said, "Oh, then, pop, you didn't

come of your own free will, you had to wait for your brother to tell you what to do." He said, "I am going to buy a home on South Clinton avenue and I have a few dollars in the bank." I said, "All right, show me the home and I will give you an answer." That was the 18th day of March.

Q. What year?

A. 1926.

10

Q. And the trial was before Judge Marshall was in December, 1924?

A. Yes.

Q. When I asked you if your husband had ever asked you to return, if you had seen your husband to talk to—

A. I never did.

Q. You said he had never asked you to return at all? What did you mean?

A. Not during 1924, he never asked me after the trial, but he did come in 1926, but he didn't ask me to return.

20

Q. What did he ask you?

A. He said he was going to buy a home on South Clinton avenue, but I have never seen the home until to-day.

Q. Didn't you say his brother told him to come to see you and get together, and then you were talking about this home?

A. He just said he was going to buy a home, and I said, "When you buy the home I will give you an answer."

30

Q. And you said "he wanted you with him?"

A. He didn't come back and tell me.

Q. I am speaking about the conversation he had with you at that time?

A. No, he didn't ask me to come. He said his brother sent him there. He didn't say to ask me. I didn't give him an answer that night.

Q. You did not?

A. No.

40

Q. Why?

A. He said, "The brother asked me."

Q. If your husband was there himself, without anybody else, arranging and talking to you about getting a home, why didn't you say "all right, get the home and I'll be right with you?"

A. Something just got in my mind.

10 Q. What?

A. In the meantime, my girls come in the dining-room, and he said, "Why in the hell don't you get the two children out of here?"

Q. What did you say?

A. I said, "Why don't you, I didn't find them on the street, if you don't want your children you don't want me," and wasn't it right, Mr. Rimo?

Q. I don't know, I leave that for the court. It is true that you and your husband have trouble with the
20 children?

A. No, sir.

Q. You never talked about the children?

A. In every home there is always something.

Q. Isn't it true that you told your husband when you saw he came home and didn't find the children to go and find out where the children were?

A. No, sir.

Q. Is it true—

A. No, sir.

30 Q. Isn't it true that—

A. No, sir.

Q. Wait a minute—isn't it true?

A. No, sir, it isn't true and I want to say—

The Court—Stop.

Q. Isn't it true that one daughter was found in a spaghetti house?

A. No, sir.

Q. Do you know where she was found?

A. Nowhere.

40 Q. Was she out?

A. At that time he was mistreating his family.

Q. Was she out?

A. She was boarding at Clinton and Hamilton.

Q. What place?

A. With Mr. Bellis' sister, and he says—

The Court—Well, how is this material?

Mr. Rimo—I don't think it is except that it was stated on the part of the husband that she was there. 10

Q. Mrs. Wilno, when were you married?

A. July, 1923—July 26th.

Q. Where?

A. At the Italian church at the corner of Hudson and Genesee.

Q. By whom?

A. Father Pozzi.

Q. Was Mrs. Lillie Onorino there at the wedding, your sister-in-law?

A. Yes, sir, not at the church, but at the house after 20 the wedding.

Re-direct examination, by Mr. Frankel.

Q. At Johnson Court, where you moved to in October, 1923, you did, didn't you?

A. Yes, sir.

Q. Did you have the entire house?

A. One room.

Flossie Wilno, a witness produced on behalf of the 30 defendants, being duly sworn, testifies as follows:

Direct examination, by Mr. Frankel.

Q. Miss Wilno, where do you reside?

A. 539 Roebling avenue.

Q. Are you the daughter of the petitioner and defendant in this case?

A. Yes.

Q. Do you recall the period just previous to October 7, 1923?

A. Yes, sir.

Q. Can you tell us what the circumstances of your leaving were?

A. Well, father and mother never got along, Mr. Frankel, and pop used to drink an awful lot, and every time mom told him to stop drinking, he kept it up all the time, and mom and I used to worry all the time, steadily, and he never give mom a penny, only what we
10 brought in ourselves, and if you asked him for a dime he would never give it to you. He would give it to you for one week and then he would wait until you got paid and take it off you again, and lots of times we come home from work and found mom with black eyes, and would come home and find him drunk.

Q. Did you ever see him strike—

A. Yes, he always—

Q. Just wait. Did you ever see him strike your mother?

20 A. Always, and we always had to part them.

Q. You parted them?

A. All the time.

Q. You did?

A. Yes.

Q. Who was the one who caused these arguments?

A. Well, just a family quarrel.

Q. What I want you to tell is this: The period just prior to October 7, 1923, do you know—tell us what his course of conduct was around that time?

30 A. What do you mean, when we were living with him at that time?

Q. Do you know the date that you moved from that place, 409 Bridge street?

A. To Johnson Place?

Q. Yes, do you recall that date?

A. No, I don't remember; I just remember moving that morning when he sat and cooked beef stew, and said, "Kid, you might as well have the last meal with your father." He said, "Come on, kid, you might as well
40 have the last meal with your father."

Q. Did he or did he not want you to leave?

A. Well, he just sat there and watched us moving.

Q. Do you know whether or not he ordered your mother to leave?

A. Yes, I was there, the Saturday afternoon when he called her in the other room.

Q. Just what did he say at that time?

A. That's all that I know, that I heard him say to 10 mom, "Well," he said, "I think its best for you," he says, "to get out." He says, "Because we can't get along," he says, "and it's best for you to get along with your family and I'll live alone," he says, "because we can't get along," and mom come in and told me, and I says to pop, "Do you mean it?" and he says to me, "You butt out of my business," and he gave me a shove on the side, and that's all that I remember.

Q. Did you see your father pull your mother to the door on that occasion?

A. Yes, when he said, "If she didn't get out he was going to drag her out," that's when I jumped in.

Q. What did she say at the time?

A. Who was that?

Q. Your mother?

A. She didn't say nothing, she just said, "Well, I'll tell you what I'll do. I'll just"—

Q. Did he hear this?

A. No. I said, "Maybe he's kidding you."

Q. Well, never mind. Has your father ever requested 30 you to come back and live with him?

A. Never.

Q. Never has?

A. No.

Q. Do you know whether he has ever requested your mother to come back and live with him?

A. I remember one night he did. He come to the house to see the kid when he was sick. We sent for him because we didn't have any money, and sent for a doctor and medicine, and we sent for him to come up.

Q. What did he say?

A. Mom wasn't home, she was working on Cooper street.

Q. Were you home at the time Mr. Morrison and Mr. Wilno came to the house?

A. Yes, sir.

Q. Just what took place at that time?

10 A. I remember Mr. Morrison coming first, and father came in after, and I went down to Mr. Morrison, the day before that, and told him I was laying off from work for three weeks and see if pop would provide us more coal because the \$15 he was giving us and the \$7.50 I was giving wouldn't buy the coal, so he said he would ask pop about it, and the next morning they came up and Mr. Morrison came first and pop came after, and when mom gave the baby to my father, and dressed him all up, she said, "All right now, the baby is ready, take him." I said, "Listen, pop, as long as you are

20 taking the children, why not take mom?" He said, "I wouldn't take your mother back for a gift." I said, "You always talk that way about her anyway, you never give her courage, you always talk about her."

Q. What did he say?

A. That's what he said. He wouldn't take mom back for a gift.

Q. Did he take the baby?

A. He took the baby, and when he was there he said, "If you had a good heart you wouldn't give me this kid." My mother got up and I pulled her down because she couldn't stand on her feet.

Q. What happened?

A. She took the baby off my father.

Q. Did you go in company with your sister to Loretta Pizzuti's house?

A. Yes, I did.

Q. When?

A. I think it was February 4th or the 24th. I remember it was on the 4th, anyway.

Q. This year?

A. Yes.

Q. Is she here?

A. Yes, right there, sitting there.

Q. Will you point here out?

A. The young lady sitting there with the black hat.

Mr. Frankel—Stand up. (Loretta Pizzuti rises.)

10

Q. Is that Loretta?

A. Yes, sir, that's Loretta.

Q. What took place when you went to see Loretta?

A. What took place?

Q. Yes, did you see her?

A. I certainly did.

Q. Who else was there with Loretta, if anybody?

A. My father.

Q. What time of the day was this?

A. That night.

20

Q. What time?

A. Eight o'clock.

Q. Eight o'clock at night?

A. Yes.

Q. Where were they?

A. They were in the parlor.

Q. Who was with them?

A. Just her and my father.

Q. About what date was this, did you say?

A. It was eight o'clock at night.

30

Q. About what date?

A. I don't know.

Q. The date of the month?

A. I don't know whether it was February 4th or the 24th—it was on the 4th, anyway.

Q. Was it after the divorce papers were filed against your mother?

A. Yes.

Q. You know that?

A. Yes, sir.

40

Q. What brought you to this house?

A. Well, we got letters written to my mother.

Mr. Rimo—That is objected to.

The Court—Of what importance is that?

Mr. Frankel—I will withdraw the question.

Q. What took place at Loretta's house, what did you say?

10 A. I didn't have no intentions—it was these letters.

Mr. Rimo—That is objected to.

Mr. Frankel—The purpose is to show the intimate relationship.

The Court—She may testify to what she saw, or as to what was said in the presence of the petitioner.

Q. What was said?

A. I have to give my story.

Q. What was said?

20 A. About the letters?

The Court—About anything.

Q. What you said to her?

A. These letters we got, two letters we got we never paid any attention to them—

By the Court.

Q. What was said and done there that night?

A. I went down to Loretta's house and I knocked at the door.

Q. What did you say—did you see Loretta?

30 A. She invited me and my sister in, so I went in. I said, "Loretta, we are getting a few letters"—

By the Court—Was your father there?

Q. Was your father there?

A. Yes, sir, my father was there.

Q. All right, go on.

A. I said, "We have been getting these letters about you and my father—scandal. She didn't give me no chance to open the letters or let me read them. She says to me, "I don't know nothing about no letters, and I don't care," she says. I says, "I

40

know, Loretta, my father is a married man with seven children, and you ought to be ashamed of yourself, a young girl, sixteen years old, to get hooked up with a man 47." I said, "If he was divorced it would be different." I said, "He has still children and it looks bad for us, and these things are not right for me to hear." I said, "We are young and I have intentions to get married 10 soon, and it makes it very bad for me and my friend," and my friend told me that the scandal objected to, his mother didn't like it any more. She said, "I like your father and I am going to marry him." I said, "You can't." I said—my father said, "What did you come here for?" I said, "I come up for Loretta to be settled down." He said, "You are always looking for arguments. If you don't go out I will get a cop." I said, "I don't care, I didn't kill nobody here yet." He said, 20 I served your mother with divorce papers." I said, Yes, that is the notice, but you didn't get the divorce yet." He said, "Get out or I will throw you out. He made an attempt to throw me out, and, when I made an attempt to get out, Loretta grabbed me by my eye and my eye was scratched. She made an attempt to hit me and I struck her back. My sister came in and parted us, and my father thought she was hitting Loretta, but she wasn't and he gave my sister a punch on the breast, and he gave me a 30 chop in the ear, and I had a swollen ear for a while. He said, "I'm going to pay you for that," and I said, "All right, pop, come around at three o'clock." He came to Goldberg's store—

Q. Your father did?

A. My father did. He came to Goldberg's store, where I was working, and I lost my job for that reason. I said if I ever caught her with my father I was going to make it hot and heavy for her. He told Mr. Cohen to keep us in jail, we deserved it.

40

Q. What then?

A. My sister Mary went up and said, "Pop, this is Mary speaking, we are under bail and wish you would come and bail us out, and as you are the only one we can depend on—"

The Court—I don't think this is competent and I don't think it is material.

10 A. And he had me under \$1,700, and I said, "If I ever get her with my father—"

The Court—Stop.

Q. Did you have Loretta arrested?

A. No, she had me arrested, first.

Q. Did you have her arrested?

A. I had her arrested, yes.

Mr. Rimo—I don't like to interrupt, but I can't see the materiality of this line of questions.

The Court—There is no question pending now.

20 Q. Do you know whether your father bailed Loretta out?

The Court—Suppose he did?

Mr. Frankel—The purpose is to show the relationship in view of the testimony we have already put in, to show the intimacy between Loretta and Mr. Wilno. She testified that Loretta said that she was going to marry Mr. Wilno.

The Court—Is that all the testimony you have to support the allegation of adultery?

30 Mr. Frankel—No, we have further testimony.

The Court—Well, let us have the further testimony.

Q. The day that you moved out, who was the expressman?

A. Red, that's all I know.

Q. Was that this man that testified this morning?

A. Yes, sir.

Q. Did you hear your father ask your mother to stay for the sake of the children?

40 A. No—no, sir.

Q. What did he say, if anything?

A. Nothing at all, that I know of.

Q. Was he talking to your mother that day?

A. No, they weren't speaking.

Cross-examination, by Mr. Rimo.

Q. They did speak once in awhile, but not much?

A. Not as far as I know of, they weren't speaking at 10 all.

Q. Not at all?

A. No, sir.

Q. You were not there much of the time, were you?

A. I was always with mother, we worked together and come home together. I was always with her.

Q. Were you with her the day she moved?

A. Yes.

Q. You know your mother went to get that expressman to move you? 20

A. No.

Q. You say you were always there?

A. Not the night she went to see the young man about moving.

Q. Then you weren't always with her?

A. Not that night.

Q. Didn't she tell you she was going down?

A. She didn't tell me anything.

Q. Didn't you know she was going to move?

A. No, she said she was going to look for a house to 30 see whether my father was kidding her or not, and if he was, he would hold her back.

Q. Was your father there?

A. Yes, he was on the job.

Q. Didn't he say to your mother "he didn't want to see her go?"

A. Not that I know of.

Q. What do you mean?

A. Well, I wasn't there all of the time.

Q. You just said you were? 40

A. I was there in the house, but I didn't hear her say anything about that.

Q. You didn't mean then that you were there all the time?

A. I was in the same house, but I didn't hear him say a word to mother.

Q. Not a word?

10 A. No.

Q. The fact is that you sort of broke into this house of Loretta's, isn't it?

A. No, I didn't.

Q. And the fact is when you got in there you started to fight?

A. No, sir, I just called in to talk to the young lady.

Q. Are you the daughter that your father had to get one morning as early as two o'clock in the morning?

A. No, never.

20 Q. Didn't you have to be got by police officers?

A. I remember one night he was drunk and he ordered us out, and I came home late from the movies at 11 o'clock after he put me out, and Mr. Moody picked me up and told me to get right home.

Q. Isn't that the night your father and mother were arguing about your being out?

A. It wasn't very late, it was just 11 o'clock at night.

Q. Do you remember they came to get you at the spaghetti house?

30 A. No, sir.

Q. Where was it?

A. At Mrs. Bellis', and I went out that night with her daughter.

Q. Is that where Officer Moody got you?

A. No, this was right down the street. He seen me sitting on the porch and he asked me what was I doing so late, and I told him.

Q. Your father worked until 12 o'clock, didn't he?

A. He worked from 11 at night till 7 in the morning.

40 Q. Didn't he go to work that night?

A. I don't remember, but I remember he was home when Mr. Moody took me home.

Q. Did you find him home when you got there?

A. Yes.

Q. And it was after 11?

A. What?

Q. If it was after 11; he didn't go to work?

A. I don't remember—it was after 11 I know, it was 10 after 11.

Q. Did he go to work?

A. I don't remember.

Q. You remember he was there?

A. He was there at the time, yes.

Mary Wilno, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Frankel.

Q. Miss Wilno, did you recall the day that you were 20 moved?

A. I wasn't home.

Q. Well, do you recall any occurrence just prior to the day of moving, or just before you people were moving, can you tell us?

A. I wasn't home, I was working.

Q. I mean during the week, before that was anything said or done?

A. No.

Q. Do you know whether your father and mother had 30 an argument about a week before you moved?

A. Yes, they always did fight and he always used to hit her.

Q. Do you recall him asking her to move?

A. Well, I never was home when he used to fight with her. I used to be out doing housework for Commissioner Burke.

Q. You accompanied your sister, Flossie, to Loretta Pizzuti's house?

A. Yes.

Q. Tell us what happened when you got there. Tell us of the conversation between you and Loretta in the presence of Mr. Wilno. Were you talking to her or your sister?

A. My sister was doing all the talking.

By the Court.

Q. What did she say?

10 A. Well, that we were getting letters and she wanted to know if it was true. She asked her in a nice way and my father told us he was going to have us arrested for coming out and making trouble, and Flossie said, "If it's true please have it stopped," and she said, "It looks bad, pop isn't divorced from mom yet." He said, "I am going to have a copy and have you arrested." She said, "I am going to talk to you, and Loretta made a swing at my sister, and I wanted to take Flossie and Loretta apart, and my father thought I was hitting her, and he

20 come between us and hit me in the bust."

Cross-examination, by Mr. Rimo.

Q. Did you knock at the door before you went in?

A. We did.

Q. Did you write any letters to tell them you were coming there?

A. We didn't.

Q. You were full of fight when you got there?

30 A. What is it?

Q. You were ready to pick up a fight?

A. We wasn't. We went in a nice way to find out what was between them two.

Q. You told her about the letters?

A. My sister did.

Q. Did your sister show any letters to her?

A. My sister was, but she got kind of snotty to my sister.

Q. Did she show her any letters?

40 A. No, sir.

Q. If she spoke of letters, did she have letters in her hand to show them?

A. No, she did not.

Q. You were not there when they had the argument?

A. No, I was a kid.

Q. Then why did you say that they always did have arguments and fights?

A. I was there once in awhile, and when I got home I would find my mother with bloody noses and black eyes and my father was out working.

10

Q. You never had much love for your father?

A. I had love for my mother and father, they are the parents of me.

Q. You didn't have, did you?

A. I did.

Q. It is true you had your father arrested, didn't you?

A. Well—

Q. Did you?

A. He had us arrested, then we had him arrested after.

20

By the Court.

Q. Did you or didn't you?

A. Well, we did.

Re-direct examination by Mr. Frankel.

Q. Was that before or after your father had you arrested?

A. What?

30

Q. When you had your father arrested, was that before or after your father had you and Flossie arrested?

A. After.

Nicholas Zalnta, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Frankel.

Q. Mr. Zalnta, where do you live?

A. 403 Bridge.

40

Q. How far is that from Loretta Pizzuti's house?

A. Three or four doors.

Q. In reference to John Wilno's house and place of business, how far is that?

A. Yes.

The Court—Is it three or four doors from 407 or 409?

10 Q. Do you recall seeing Loretta Pizzuti to his place of business and home?

A. Once in awhile.

Q. How many times?

A. I can't—I come once in awhile for a shine, that's all.

Q. Do you know whether John Wilno lives at the house alone?

A. Yes, he lives alone.

20 Q. Have you seen Loretta Pizzuti and John Wilno out together at different places?

A. No, sir.

Q. Have you ever seen them in an automobile together?

A. No, sir.

Q. You never have?

A. No, sir.

Mr. Rimo—No questions.

30 *Rose Constance*, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Frankel.

Q. Do you know John Wilno?

A. Yes, sir.

Q. Did he propose to marry you in January, 1923?

Mr. Rimo—That is objected to. There is no allegations in the answer at all from which we were apprised of any dealing with this person, and it seems to me that it is only fair that we should have some warning of what we have to meet.

40

The Court—I will hear what it is and you may move to strike it out afterwards.

Q. Did he tell whether or not he was a single man or a married man?

A. He told me he was a single man.

Q. Did he propose to you in January, 1923?

A. He didn't propose to me, but he told my father—
Mr. Rimo—That is objected to. 10

By the Court.

Q. Did you hear him?

A. No, sir.

Q. Did he ever speak to you?

A. Yes.

Q. Did he speak to you about marriage?

Mr. Rimo—It seems to me that if this witness is to tell of the conversation had she might tell that, but to ask leading questions, I don't think she should be permitted to do that. 20

Mr. Frankel—I will withdraw the question.

Q. What conversation did you have with John Wilno?

A. Why, I remember he came to our house and my mother was sick in bed. He came with my sister and brother-in-law and the rest of the Spairs. We didn't know who the man was, and they didn't tell us who he was either, but they came upstairs.

Q. Did they tell you from where he was?

A. We didn't know who he was. We never saw the man before, so when they all got ready to go home he insisted on staying. Well, anyway, he had some drinks in him and they all went and left him there, so he was upstairs and talking to my mother and father and the children. He stated that he was a single man and that he didn't have no one; he was living with his mother and no one else but he and his mother lived at his home. They had a big home, he had, and as to money, he was making good money and that he was a single man, and he told my father— 30

Mr. Rimo—That is objected to.

40

Q. Did you hear this?

A. I heard that, yes. I heard of it—it was one of these statements and he was telling this in the presence of my mother and the children, up in the bedroom, and stating he was a single man, living alone with his mother, so I went downstairs and my mother heard this. I didn't hear this—

10 Q. Don't tell it, then.

A. Then.

Q. What other conversation did you have with him?

A. He asked for a cup of coffee, and I went downstairs and made some coffee. I stayed down, and he came and sat down alongside of me. He was jobber-jabbering. I don't remember what it was all about, but he was talking, and he got real close to me and he tried to get smart to me.

Mr. Rimo—This is objected to. There is no time
20 fixed.

The Court—You may cross-examine on that. The objection will be overruled.

Q. Proceed.

A. So I pushed away and my father was sitting there. I was afraid to say anything to my father. I told him to stop. I pushed away and he got closer to me again and he started again, so I got up and went out in the kitchen. I went upstairs and told my mother. I told my mother everything what had happened there. She called my
30 father and tells my father to get the man out of the house, but she didn't tell him what for. She said, "I don't want that man in the house. Get him out."

Q. Did she get him out of the house?

A. No, he stayed there all that night. He acted drunk and didn't go. He didn't come upstairs. I stayed and went to watch him, and my father said, "Rose, bring us a towel." I brought it down. I didn't know where my father went, but that left him and I
in the kitchen, and I handed him the towel and he tried
40 to grab me again and tried to kiss me, so I told my

mother again, so she told my father to get the man out and he wouldn't go. It was eleven or twelve o'clock, I don't know what time, and my father couldn't get him out, and for the respect of them he said, "He's drunk. We'll let him go," not knowing what the trouble was. We went to bed and mother said that the children better go to bed and close their doors. She said, "You children better go to bed and close your doors." I saw him
10 the next morning; I don't know what time.

By the Court.

Q. Did he leave?

A. He left, and I don't think he was at my house any more after that.

Q. You don't know whether he was there any more after that?

A. I don't think he was.

Cross-examination, by Mr. Rimo.

20

Q. You say your father—

A. Yes.

Q. —was sitting somewhere in the house where you and Mr. Wilno were sitting, is that correct?

A. Yes, sir.

Q. He sat in the same place?

A. Yes.

Q. And your father saw—

A. Well—

Q. Just wait—your father saw when Mr. Wilno came
quite close to you? 30

A. Well, my father was on the other side of the table, and I was on this side, but the chairs were right close.

Q. Oh, this was at the table?

A. That's what I said.

Q. I didn't hear you say that?

A. Well, I did.

Q. Was the dinner going on?

A. No.

Q. What was it?

40

A. We just made coffee; he asked for coffee and we made coffee, and I sat down and had a cup of coffee, too, but he came and sat down alongside of me, but my father was on the other side of the table, and he didn't know what he was doing. He didn't pay any attention.

- Q. Paid no attention?
A. No.
- 10 Q. How do you know?
A. He didn't.
Q. How do you know he didn't know?
A. What?
Q. How do you know your father didn't know?
A. My father didn't seem to show he noticed him.
Q. What was the matter?
A. He got smart.
Q. I mean, with your father?
A. I don't know.
- 20 Q. Were you looking at your father to see whether your father saw him do anything or not?
A. No, not exactly.
Q. You weren't?
A. No, not exactly, but when he started to get fresh with me I didn't want to say anything to my father, because he would cause trouble, and my mother was sick in bed, and I didn't want to cause any disturbance.
Q. That's the reason?
A. Yes.
- 30 Q. You saw he was getting close to you?
A. Yes.
Q. Why didn't you get up and go?
A. Well, I did move from them and he got closer, and the second time I got up and went out.
Q. You got up the second time?
A. Yes.
Q. And went away?
A. Yes.
- 40 Q. Did you tell your father?
A. Did I?

- Q. Yes?
A. No.
Q. You didn't?
A. No, I told my mother.
Q. Why?
A. Why didn't I tell him?
Q. Yes?
A. I was afraid to tell my father. 10
Q. What did you tell Mr. Wilno?
A. I told him to stop. I said, "If you don't I'll tell my father and mother."
Q. That's what you told Mr. Wilno?
A. Yes.
Q. You would tell your father and mother?
A. Yes, sir.
Q. Why didn't you?
A. I was afraid to tell my father.
Q. Your mother was sick? 20
A. Yes.
Q. But your father was well?
A. Yes, sir.
Q. Well, why didn't you tell your father?
A. Because I knew there would be trouble.
Q. Trouble?
A. Of course.
Q. Didn't you feel you could save trouble?
A. I was afraid to tell my father because I knew there would be a fight among them. 30
Q. Now, the fact of the matter is that he didn't do anything to you at all?
A. He did.
Q. Isn't that true?
A. He did; he tried to get smart with me with his hands underneath the table.
Q. What did he do?
A. He tried to run his hands up my clothes.
Q. What did you do?
A. I moved away. 40

- Q. Are you sure you moved away?
 A. Yes.
 Q. You were there quite awhile?
 A. I know.
 Q. Is that all you did?
 A. What?
 Q. Move away?
 10 A. Is that all I did?
 Q. Yes?
 A. Of course, and when he tried it again I just got up.
 Q. Is that all you did?
 A. What more could I do?
 Q. Is that all?
 A. What more could I do? Do you think I was going to tell my father?
 Q. Did you ask him what he was trying to do?
 20 A. No, my father was there, how could I.
 Q. You just permitted that conduct to go on?
 A. Well—
 Q. Did you?
 A. No, but I was afraid of my father. I knew there would be trouble. That's why I went up and told my mother. I told mom to tell my father to get him out of the house.
 Mr. Frankel—I will call Mr. Franko.
 The Court—What do you expect to show by this
 30 witness?
 Mr. Frankel—The conduct between John Wilno and Loretta Pizzuti.
 The Court—Have you any direct testimony as adultery?
 Mr. Frankel—No actual testimony; no actual eyewitness except what one can infer from desire and inclination.
 The Court—Of course, you will have to show opportunity.
 40 Mr. Frankel—That is what I desire to show.

The Court—If you have anything stronger than what you have shown up to the present time you may put it on.

Mr. Rimo—May I move now to strike out the testimony of the witness that just testified?

The Court—You may, and I will hold it until the conclusion of this case.

10

(Vincent Serafini is sworn as interpreter.)

Gaetano Franko, a witness produced on behalf of the defendant, being sworn through the interpreter, testifies by interpretation as follows:

Direct examination, by Mr. Frankel.

Q. Mr. Franko, what is your occupation?

A. I am a mason.

Q. Do you recall doing any mason work?

A. Yes, sir.

20

Q. At Mrs. Eugene Onorino's house within the past six months?

A. Yes, sir.

Q. Within that time?

A. Yes, sir.

Q. When was that?

A. In March or April?

Q. Did you see John Wilno coming to the house at times?

Mr. Rimo—This is objected to on the ground 30 that the answer sets up an offense committed in the month of January or February, and the testimony up to the present time offered from this witness is that since March or April he worked at this house, and I don't think anything he could say could be relevant to the issues drawn in this case.

The Court—If it causes you any surprise I will see that you are taken care of.

Q. (Stenographer repeats the question.)

A. I saw him once. He was eating at the table.

40

Q. Do you remember an occasion seeing him and Loretta Pizzuti at the house?

A. I didn't see her on that day but on the next day.

Q. Did you see either of them, or both of them, go upstairs in that house.

A. No, I didn't see both of them. I saw the two girls, the daughter of the house boss and the girl.

10 Q. Did you see Loretta Pizzuti come down the stairs of this house followed by John Wilno?

A. I saw her coming downstairs, but I didn't see him.

Q. Where was John Wilno at that time when she was coming down the stairs?

A. He was at the table eating.

Q. During all of the time?

A. Yes. No, he only stayed there a half an hour, then he went.

20 Q. Well, didn't he go upstairs during that time he was there?

A. I didn't see him with my eyes. I saw him coming in and out of the front door, but I didn't see him with my eyes.

Q. Didn't you tell Mrs. Annie Wilno that you saw Mr. John Wilno and Loretta coming down the steps of that house at that time?

Mr. Rimo—Objected to.

The Court—Objection is overruled.

30 A. That they were in the front room; that they had come downstairs, the two girls were talking together where they could work, that's all.

Q. I mean before anybody was talking downstairs, isn't it a fact that John Wilno was coming down the steps following Loretta Pizzuti at this time?

Mr. Rimo—That is objected to, it is being asked and answered.

The Court—Objection overruled.

A. No, sir, I didn't see it.

Q. Sure?

40 A. I didn't see it.

Q. Didn't you tell Mrs. Wilno at her home—didn't you tell Mrs. Wilno on the street that you saw Loretta Pizzuti and John Wilno coming down the steps and that you asked Loretta at that time what she was doing upstairs with John Wilno, and she answered, "Well, I'm going to marry him."

A. I was working and I was thinking about working. I wasn't inside, and I couldn't go for them to see what 10 they were doing.

Q. That is not an answer to the question. Will you answer that question?

A. That is an answer, yes.

The Court—Repeat the question. (To the witness)—And tell us whether you told Annie Wilno?

Q. (Interpreter repeats the question.)

A. No, sir, I didn't say anything.

Q. Do you recall talking to Mrs. Wilno some months ago, around March or February of this year? 20

A. I spoke every day to her.

Q. Prior to the time that you told her about this Loretta and John Wilno affair, had you ever spoken to her?

Mr. Rimo—I don't think that is proper.

The Court—If you have any evidence on this charge that is of any importance at all you had better let us have it. We will adjourn here.

Adjourned to Thursday, October 6th, 1927, at ten-thirty, at the same place. 30

Testimony taken in the above-entitled cause, at the State House, Trenton, New Jersey, on Thursday, the sixth day of October, 1927, at 12:45 P. M.

Before Hon. MALCOLM G. BUCHANAN, Vice-Chancellor.

Appearances—Romulus P. Rimo, Esq., for the petitioner; George A. Cella, Esq., for the defendant. 40

Nicholas Tummiolo, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

Q. Mr. Tummiolo, do you know Mr. Wilno?

A. Yes, I know Mr. Wilno, sure.

Q. Do you know his wife?

A. I know good.

10 Q. You know his wife?

A. Yes.

Q. Do you know they are separated?

A. I don't know anything about it. I know they separated, that's all I know.

Q. You know they are separated?

A. That's all I know.

Q. You know that?

A. Yes.

20 Q. Did you ever have a talk with Mr. Wilno in regard to his family?

A. No, sir, all I know is they separated.

Q. Is that all you know?

A. Yes.

Q. Did you ever speak to Mr. Wilno about this case or about his family affairs?

A. No, sir.

Q. Sure?

A. No, sir.

30 Q. Did you ever tell anyone that you did speak to Mr. Wilno about it?

A. I have ever told anyone? I don't know anything about it.

By the Court.

Q. Did you ever tell anybody that you knew anything about it?

A. I don't know.

Q. Don't know what?

A. I don't know anything.

40 Q. Did you ever tell anybody that you did know something about it?

A. No, I never tell anybody.

Q. Have you ever spoken with Mrs. Wilno about her troubles with her husband? Did Mrs. Wilno ever come to see you?

A. Never come to see me.

Q. And you never spoke to her or to Mr. Wilno about this case?

A. No, sir.

Mr. Rimo—No questions.

10

Mary Catano, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

The Court—Did you talk to this last witness who has testified?

Mr. Cella—Not about the case, your Honor; it has been very difficult to talk with him.

Q. Do you know Mr. Wilno?

A. Yes, sir.

Q. Do you know his wife?

A. Yes.

Q. Where do you live?

A. 122 Pearl street.

Q. Pearl street?

A. Yes.

Q. This city?

A. Yes.

Q. How long have you lived there?

A. Two years.

Q. Before that time where did you live?

A. 413 Bridge street.

Q. That is two doors away from where Mr. Wilno lives?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. Did you ever see Mr. Wilno strike his wife?

A. Never did.

40

- Q. Are you sure?
 A. I never did.
 Q. Did you ever hear of any fighting he had with his wife?
 A. I don't know anything about it.
 Q. Do you know of your own knowledge how he treated his wife?
 10 A. I don't know anything about it.
 Q. Did Mrs. Wilno buy groceries in your place?
 A. Well, before, about three years before.
 Q. Did she pay you?
 A. They owed me a bill, but never paid it.
 Mr. Rimo—I can't see the relevancy of this, your Honor.
 Q. Have you been paid?
 A. No, I didn't.
 Q. Do you recall, Mrs. Catano, one time Mrs. Wilno
 20 running into your store?
 A. I don't know anything about it.
 Q. Do you remember her running into your store one time?
 A. I don't know anything about it. I know nothing about it.
 By the Court.
 Q. Listen to the question and don't answer before you hear the question, and then tell us what you know in answer to the question.
 30 A. I don't know.
 Q. Do you recall, Mrs. Catano, Mrs. Wilno running into your house or into your store?
 A. No, I don't know anything about it.
 Q. Are you sure?
 A. I don't know anything about it.
 Q. Did you ever talk to Mrs. Wilno about her troubles with her husband?
 A. I never did.
 Q. You never talked to her husband anything about
 40 her troubles?

- A. No, I don't know anything about it.
 Q. You didn't talk to her about it?
 A. No.
 Q. Did you ever go to see Mrs. Wilno—
 A. Never did.
 Q. Wait, did you ever go to see Mrs. Wilno about a bill she owed you?
 A. Every once in awhile I used to go. 10
 Q. What would she say to you?
 Mr. Rimo—That is objected to.
 The Court—Objection overruled.
 A. When her husband gets paid she would pay me.
 Q. Did you ever go to see her husband about the bill?
 A. No.
 Q. You didn't?
 A. No.
 Q. What did he say to you?
 A. I never did go to him. 20
 Q. Did you expect to be paid from Mr. Wilno or Mrs. Wilno?
 Mr. Rimo—Objected to.
 The Court—Objection overruled.
 A. She bought the groceries.
 Q. At that time she was living with her husband?
 A. What?
 Q. She was living with her husband?
 A. Yes.
 Q. At that time? 30
 A. Yes, sir.
 Q. And you expected to be paid by Mrs. Wilno?
 A. By Mrs.
 Q. Is that right?
 A. Yes, sir.
 Q. And you never made demand upon Mr. Wilno for payment of your bill?
 A. I didn't.
 Q. Why?
 A. No, he never was in my store. 40

Q. Didn't he come to your store?

A. No.

Q. Do you say you never talked to Mrs. Wilno—

A. No.

Q. About this case?

A. No, I never did.

The Court—Don't start to answer the question
10 before it is asked.

Q. Or to anyone else?

A. No.

Q. You didn't want to come here this morning, did
you?

A. I got a subpoena and I didn't know anything about
it.

Q. Well, you did come here in the hallway, and when
you were here you said you were going to pull Mrs.
Wilno's hair for subpoenaing you, didn't you say that out
20 in the hall? Answer yes or no.

A. Yes, I said it, no use to lie.

Q. And the reason you are here now, and the reason
you are at this time reluctant to give your testimony
here, is because you didn't want to come into this family
trouble, isn't that so? That is what you said, anyhow,
isn't it?

A. They called me this morning, but they ought to
let me know two or three days ahead.

Q. That's the trouble?

30 A. They ought to.

Q. Would that have refreshed your memory?

A. Yes.

Q. You would have remembered more?

A. No, I wouldn't remember nothing.

Q. You wouldn't?

A. No.

Q. Do you expect to be paid this grocery bill?

Mr. Rimo—That is objected to.

The Court—The objection is overruled.

40 A. I do.

Q. You expect to be paid?

A. Yes.

Q. Has Mr. Wilno promised to pay the bill?

A. She promised to pay it.

Q. Has Mr. Wilno promised to pay it?

A. Mr. Wilno?

Q. Yes.

A. I never talked to him.

10

Q. Is there anything you wish to say about this case?

A. No, I haven't got nothing to say.

Mr. Rimo—No questions.

Lizzie Fisher, a witness produced on behalf of the de-
fendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

Q. Miss Fisher, you know Mr. and Mrs. Wilno?

A. Yes, sir.

Q. Both of them?

20

A. Yes.

Q. Were you ever present in or about Mrs. Catano's
store when Mrs. Wilno ran in there?

A. I remember her running in there one time, but it
has been so long ago I don't know what the trouble was,
but it was of trouble between her and her husband.

Q. Mrs. Catano was there?

A. I couldn't say. I don't think so. I think one of
the girls was there.

Q. Do you remember Mr. Wilno running after her? 30

A. No, I don't remember that part.

Q. You don't remember?

A. No.

Q. Tell us what you do remember?

A. I remember her coming in there all excited, but
I can't remember what she said.

Q. Did you see Mrs. Wilno there?

A. Yes, I seen Mrs. Wilno there, but not Mr. Wilno.

Q. You saw her?

A. Yes.

40

- Q. What did Mrs. Wilno say?
 A. She was crying at the time, all excited.
 Q. What did she say?
 A. I think she had them 'phone for an officer. I think, if I am not mistaken, I left the store right after.
 Q. Did the officer come?
 A. I don't know whether he came or not.
 10 Q. Have you spoken to Mr. Wilno about the case?
 A. No, sir, never. I didn't know I was brought into the case until yesterday morning.
 Q. You didn't speak to him?
 A. No.
 Q. Do you recall an ambulance coming there on that day?
 A. Yes, sir; Mr. Wilno took poison and there was an ambulance coming after him.
 Q. What became of Mrs. Wilno?
 20 A. She was on the corner crying and all excited, and I took her down to my house.
 Q. You took her to your house?
 A. Yes, sir.
 Q. Did you ever talk to Mr. Wilno later?
 A. No.
 Q. About it?
 A. No, I never mentioned nothing to him about the case.
 Q. Did you ever talk to Mr. Wilno's daughter?
 30 A. The girls?
 Q. Yes?
 A. No.

Cross-examination, by Mr. Rimo.

- Q. You say that Mr. Wilno took poison?
 A. Yes.
 Q. What happened?
 A. He took poison and they took him to the hospital.
 Q. Do you know how long he was at the hospital?
 40 A. He was there a couple of days, I think.

Marian Delapo, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

- Q. Miss Delapo, do you know Mr. Wilno?
 A. Yes.
 Q. And Mrs. Wilno?
 A. Yes.
 Q. Do you know anything about their case? 10
 A. No.
 Q. Don't you speak English?
 A. No, I don't understand English.
 Q. You talked with me English, didn't you?
 A. No understand English—no understand much.
 Q. Do you understand this: Do you know Mr. Wilno?
 A. Yes.
 Q. Do you know Mrs. Wilno?
 A. Yes. 20
 Q. Do you know they are separated?
 A. I don't remember. About three years ago was this case.
 Q. Where do you live?
 A. 411 Bridge street.
 Q. That is next door to Mr. Wilno's house?
 A. Yes, sir.
 Q. Right next door?
 A. Yes.
 Q. Did you visit Mr. and Mrs. Wilno? 30
 A. No, sir.
 Q. You never went in their house?
 A. No, sir.
 Q. Did you ever hear any arguments or fights between the husband or wife?
 A. After the fight there would be the same.
 Mr. Cella—The witness seems to refuse to speak any English, and I would like to recall her this afternoon.
 The Court—All right. 40

Mary Gigvito, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

Q. Mrs. Gigvito, you know the parties interested in this case?

A. Yes.

Q. Do you know anything of their family affairs?

10 A. Only what she used to tell when she come outside.

Q. Do you know of your own knowledge how they got along as husband and wife?

A. They used to fight, that's all I know. She used to tell us.

Q. She said they used to fight?

A. Yes.

Q. Do you know why they fought?

A. I never interfered. I couldn't tell you.

Q. Were you ever in their house when arguments or
20 fights took place between the husband and wife?

A. No.

Q. You weren't?

A. No, shortly after she would come outside and be crying, and have her eyes black, and she would tell us her story.

Q. Would you see her husband there at times?

A. No, I never seen him there.

Q. At the time when you saw Mrs. Wilno coming out of the house with black eyes and bruises, do you know
30 whether Mr. Wilno was in the house?

A. No, I didn't see him.

Q. Didn't you see him there?

A. No, sir.

Q. Do you know Loretta Pizzuti?

A. Yes, sir.

Q. You lived where?

A. We lived at 230.

Q. And where does she live?

A. She lives at 226.

40

Q. Have you ever seen Mr. Wilno enter Loretta Pizzuti's house?

A. Well, I seen him in there, at dinner and at supper, when I was sitting outside.

Q. Have you seen him there late in the evenings?

A. I can't say late. I don't know what time he comes out.

By the Court.

10

Q. Did you see him late in the evenings?

A. Sometimes a little after eight.

Q. Did you see him there later than that?

A. No, I got something to do in there. I got lots of things to do inside.

Q. Did you ever see him later than that?

A. No, sir, I never did.

Q. How long has he been going to visit the house?

A. I couldn't tell you.

Q. Can you recall the first time?

20

A. Yes, sir, about three or four months—some time in March; yes, sir, some time in March.

Q. Six months or so ago?

A. Something like that, about March.

Q. Have you ever seen Mr. Wilno and Loretta Pizzuti in his automobile?

A. Only this last Sunday. I saw Loretta's father and Loretta and some more getting out of the car.

Q. Getting out?

A. Yes, a little after six in the evening, on Sunday. 30

Q. Last Sunday?

A. I think it is about three or four weeks ago.

Q. Who was driving the car?

A. Johnnie.

Q. Who was sitting next to him?

A. Loretta's father.

Q. Where was Loretta sitting?

A. Right in the back of them with Johnnie's aunt.

Q. How many times have you see them together?

A. This is the first time I ever seen them.

40

Q. Have you seen him since?

A. No. This is the first time I ever seen him.

Q. Are you friendly with Loretta Pizzuti?

A. I ain't friendly with anybody.

Q. Have you talked with her much lately?

A. I haven't talked to her since she learned my daughter to run away.

10 Q. When was that?

A. This will be about a year. It was a year this big holiday they have in Chambersburg. I think it was in September last time.

Q. Have you ever talked with Loretta Pizzuti about Mr. Wilno?

A. No, I never asked. It was none of my business. I never had any use for her.

Q. Do you know the condition of her health at the present time?

20 Mr. Rimo—That is objected to. I can't see the materiality of that.

The Court—She may answer.

Q. Do you?

A. What?

Q. Do you know what the condition of her health is at the present time?

A. I didn't go in her house and she never comes outside.

Q. Then you don't know?

30 A. No.

Q. Did you ever ask anybody if it is true that Mr. Wilno was keeping company with Loretta Pizzuti?

Mr. Rimo—That is objected to. I think I am within my rights as to any inquiry that may have been made.

The Court—She may answer.

A. I will tell you how this thing happened. Johnnie's brother come in one Monday morning and said, "Mary, I'm sorry to come in and tell you, but I only wish your
40 daughter would keep away from writing all them bad

letters to Annie." He said, "She is a bad girl. We like to have this thing stopped." I asked Johnnie, "Will you please come back in the afternoon when my daughter comes here. I will explain it to her." The girl lived on Hanover street, and I asked her, "Is it right you are writing letters to Annie?" She said, "Mom, I don't know anything about it," and they come down and I had a talk to the girl, so he says he was busy in the shop
10 and couldn't come down in the afternoon.

The Court—Let that be struck out. Whatever it is it is hearsay.

Q. Did you ask anybody about Mr. Wilno keeping company with Loretta Pizzuti; if you have, who?

A. That is the way it started. I said, "Why did you want to put my daughter in bad. You ought to be ashamed. He is a married man." She said, "Why do you take well care of your daughter." I said—

The Court—Who was this?

20

Mr. Cella—I don't know.

The Court—Strike it out. Ask it again.

Q. Did you ever talk to Mr. Wilno about him keeping company with this girl?

A. It was none of my place to go and ask him.

Q. Do you know he is keeping company with her?

A. I don't know. That is what people say, and that is the only way I know.

Mr. Rimo—I ask that the last be struck out.

Mr. Rimo—No questions

30

Recess until two o'clock.

After recess.

Mr. Cella—At your request I have interviewed a number of these witnesses, and I find invariably that they are hostile to our case. I have, however, a statement left with me by Mr. Frankel, that those witnesses possess the information contained in this statement, and I would like
40

to ask the Court's permission to call these witnesses as hostile witnesses.

The Court—You may call them, but whether your request is granted will all depend upon what they answer on the witness-stand.

Marian Delapo, being recalled on behalf of the defendant, testifies, through interpretations, as follows:

Direct examination, by Mr. Cella.

Q. Mrs. Delapo, you were testifying this morning in regard to the troubles of Mr. and Mrs. Wilno. Will you continue and relate what you know?

A. On the last time that they had a fight I don't know whether they beat one another or not. I don't know anything about that. When they had this fight I saw that she was crying, but I didn't see whether he had beaten her or not. I hadn't gone into their house. This, I know, which I want to tell about when he was sick at the hospital, she was home and she left the children home and went to her parents' home, and I went to call her. She was in her parents' home a day or two, and then at the instance of my own husband I went and called her. We thought that the children couldn't stay home. I went to call her, her husband didn't—

By the Court.

Q. When was this?

A. I don't remember anything more.

30 Q. When was this?

A. I don't know. I couldn't remember. It is over three years since they separated.

Q. Well, was this before or after they separated?

A. Before they separated.

Q. How long before?

A. It might have been a year before, but I can't remember.

Q. How many times has Mr. Wilno been to the hospital, do you know?

40 A. Only once I remember.

Q. Do you know what for?

A. No, I didn't see anything.

Q. You live next door, don't you?

A. Yes, sir.

Q. How long have you lived there?

A. I lived there eight years.

Q. Have you ever gone into Mr. and Mrs. Wilno's house? 10

A. No, I haven't been on friendly terms with her. I don't know anything.

Q. Are you still living at the same place?

A. Yes, sir.

Q. Are you on friendly terms with Mr. Wilno now?

A. We speak, but he is in his home and I am in mine. I am a woman and I have nothing to do with him.

Q. Mrs. Delapo, didn't Mrs. Wilno come back the same evening that her husband was taken to the hospital?

A. She came the same evening after I called her. 20

Q. Why did you say she was away two days, before?

A. It was two days. I went to call her. She came back on that evening of the second day.

Q. Isn't it true, Mrs. Delapo, that you went to call Mrs. Wilno on the same day her husband was taken to the hospital?

A. No.

Q. You didn't?

A. No, the next day.

Q. Which is right now, you said it was the same evening that she returned home and now you said it was the next day? 30

A. I don't remember. That is three or four years ago in this case.

Q. You don't say now that it was two days?

A. About a couple of days.

Q. Which was it?

A. About a couple of days. The children were home one night alone while the husband was at the hospital.

Q. What children were home? 40

- A. All her children.
- Q. Were the grown-up daughters there?
- A. Yes, sir.
- Q. And weren't they attending to the smaller children?
- A. Well, they are young. I went to call her so they wouldn't have to stay home alone.
- Q. And where did the smaller children spend the
10 night?
- A. The sisters took care of them.
- Q. And they slept that night in their own home?
- A. Yes, sir.
- Q. And do you remember, Mrs. Delapo, going into Mrs. Wilno's home when she claimed that Mr. Wilno had beat her with a crow bar?
- A. I don't know. I didn't see anything. She told me that they had a fight, but I didn't see anything.
- Q. You saw, on that occasion, both Mrs. Wilno and
20 Mr. Wilno there?
- A. I don't know anything. I don't remember. I saw her at the door.
- Q. Didn't you see Mr. Wilno on that day?
- A. Well, I don't remember, it's so long a time since.
- Q. You went into the house on that day, did you not? You went into Mrs. Wilno's kitchen, did you not?
- A. I entered the kitchen but they had finished their fight. I didn't see anything, and his mother was there also.
- 30 Q. You talked to Mr. Wilno that day, did you not?
- A. I don't remember.
- Q. Don't you remember scolding him for beating his wife on that day?
- A. No.
- Q. Did you say anything to him about beating his wife?
- A. No, I don't know anything.
- Q. Was Mrs. Wilno crying?
- A. She was crying. I don't know anything about it.
- 40 Q. Did you ask her why she was crying?

- A. I saw that she was crying, and her son said that they had had a fight, but I don't know anything.
- Q. Did you see the mark on her back?
- A. I saw the mark, but I didn't see who put it there. What do I know.
- Q. She told you who put it there, didn't she?
- A. No, I don't know anything. She did say it was her husband, but I didn't see it. 10
- Q. And her husband was in the house when she said so?
- A. I don't remember; I don't know.
- Q. Don't you know that?
- A. No, I don't know it.
- Q. You know her husband was in the house, don't you?
- A. No, I didn't see anything.
- Q. Was he out?
- A. I don't know. 20
- Q. You didn't see him that day?
- A. No.
- Q. Who else was in that house?
- A. I don't remember anything. I didn't see anyone only the old woman was there.
- Q. Which old woman?
- A. Mr. Wilno's mother.
- Q. Were Mrs. Wilno's daughters there?
- A. I don't remember; I don't know. I have never been in her house. 30
- Q. You just said that you were in the kitchen on that day, now you say you didn't go in the house?
- A. Well, I went after the fight was over. I stayed about five minutes, and my husband called me and I went back. I didn't see anything.
- Q. Then you were in the house for five minutes?
- A. Four or five minutes, then I went home.
- Q. Your husband called you?
- A. And my husband didn't wish me to go.
- Q. You know Mr. Wilno wasn't there, is that right? 40

A. I didn't see him. I don't remember.

Q. Would you say that he wasn't there?

A. I didn't see him. I don't know whether he was or not.

Q. Do you now say nobody was there except Mrs. Wilno?

A. I don't remember.

10 Q. What day was it, Sunday?

The Court—Madam, if you are not telling now what you have been told before I shall have you brought up for contempt of court, and if I find that you have told these people things that you have testified to now, I might have to send you to jail.

The Witness—I have said that I did go into the house and she showed me her mark, and I didn't hear about it there.

20 The Court—I want you and all these other witnesses to understand that they cannot come here, after having sworn to tell the truth, and say that they do not know the things they do know, and if I find that that happens I might have to send them to jail.

Q. Did you go into Mr. Wilno's house from the front or through the back?

A. I went through the front.

Q. And whom did you meet at the front door?

30 A. I didn't meet anyone at the door. I don't know how many were in the house.

Q. Who left you in the house?

A. The boy came crying and said that "my father and mother had a fight."

Q. Then where did you go when you got in the front door?

A. I entered the house.

Q. What room did you go in?

A. There are only two rooms. I was in the kitchen.

Q. Whom did you see there?

40 A. I saw them and the mother and the fight was over.

Q. Now, you say Mr. Wilno was there and Mrs. Wilno was there.

Mr. Rimo—She didn't say that.

A. I don't remember whether both of them were there. I know the old woman, the mother, was there.

Q. You just said a minute ago they were there and also the old woman? Whom do you mean by "they?"

A. Her family, she, her children and the old woman. 10

Q. And Mr. Wilno wasn't there?

A. I don't remember. I don't know whether he was in the yard. I didn't see him.

Q. Do you know Mr. Frank Donofer?

A. I don't know.

Q. Do you know Mrs. Zalnta who lives next door?

A. No.

Q. Do you know Nicholas Zalnta?

A. Yes, I know him.

Q. Do you know his wife? 20

A. I know her, but she wasn't there at that time when they had a fight.

Q. Do you know Mrs. Zalnta's sister?

A. No, she wasn't there when there was a fight.

By the Court.

Q. Madam, don't keep saying things you are not asked about. You were asked if you knew this woman. Say yes or no.

A. Yes, sir, I know her.

Q. Was Mrs. Donofer there at the time? 30

A. No.

Q. Then did you have a talk with Mr. Wilno's mother? She was there?

A. She was there, but I didn't talk with her. I was there only about five minutes. My husband called me and I didn't speak at all.

Q. Are you sure of that?

A. I am sure.

Cross-examination, by Mr. Rimo.

Q. When Mr. Wilno was in the hospital, were those children in your care for one day?

A. No, her daughters had charge of the children.

Q. How did you come to call?

The Court—Of what materiality is that?

Mr. Rimo—I will withdraw the question.

10

Lillie Onorino, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

Q. Are you a sister of Mr. John Wilno?

A. Yes, sir.

Q. Where do you live?

A. 410 Lamberton street.

Q. How long have you lived there?

A. How long?

20

Q. Yes.

A. It will be nine or ten years, I guess.

Q. Do you keep boarders?

A. Yes, I got one.

Q. Did Mr. Wilno ever board at your house?

A. My brother?

Q. Yes.

A. My brother come and eat with me but not board.

Q. Did he have his meals with you?

A. Yes.

30

Q. When?

A. Since his mother died.

Q. Until what time?

A. Until—I don't know what time. I think it was March. I think it was the middle of March. Something like March—it was real warm.

Q. This year?

A. Yes, sir.

Q. Do you know where he is boarding now?

A. I don't know where he is boarding now.

40

Q. You do not?

A. No.

Q. Why don't you?

A. I don't know.

Q. Do you know where he is having his meals?

A. No.

Q. You know that, don't you?

A. No.

Q. He is not having them with you at the present 10 time?

A. No, more, no more.

Q. Have you spoken with your brother?

A. Well, I speak. He had a little fight with my boy and I speak with him.

Q. Did he tell you where he was boarding?

A. I didn't ask him.

Q. Did he tell you?

A. No.

Q. He didn't tell you that? 20

A. No.

Q. You don't know?

A. No.

Q. Do you know Loretta Pizzuti?

A. Yes.

Q. Have you spoken with her within the last few weeks?

A. No.

Q. When was the last time you spoke with her?

A. I don't know when it was the last time. 30

Q. You don't know?

A. Not the last time. I don't know if it was in March or January. I don't know what month. Do you think I am going to write the month and look at the calendar—

The Court—Stop. You just answer the questions, and don't ask any and don't volunteer anything. I don't want to have to speak about this again.

Q. Have you spoken to Loretta Pizzuti within the last two or three days? 40

- A. No.
- Q. You say you haven't?
- A. No.
- Q. Did you speak to her out in the hall to-day?
- A. Yes, she said, "Hello," and I said, "Hello."
- Q. Was that all that was said?
- A. It was. She asked me if I was working. I said,
- 10 "Yes."
- Q. That is all you talked to her about?
- A. That is all I talked to her. She offered me some candy.
- Q. Loretta Pizzuti comes to your house often, don't she?
- A. Now?
- Q. Yes?
- A. No.
- Q. She doesn't come?
- 20 A. No.
- Q. She did come before?
- A. Before, with my girl.
- Q. Do you know why she doesn't come to your house at the present time?
- Mr. Rimo—That is objected to.
- A. My girl was going with her and she got a big brother, and her big brother was getting kind of stuck on my girl, and I find out and I stop it.
- Q. That is the reason Loretta is not coming to your
- 30 house at the present time?
- A. Yes, I stop my girl going to her house and she stopped coming to my house.
- Q. Did she come to your house when your brother was there?
- A. Sure. You know how girls is. They would go upstairs and talk.
- Q. Did you say he went upstairs with Loretta?
- A. What do you think my home is?
- The Court—Don't ask questions. Just answer
- 40 them.

- Q. Did you ever speak to your brother about Loretta?
- A. Never.
- Q. Not at all?
- A. No.
- Q. Did Mr. Wilno ever speak to you about Loretta?
- A. No, sir.
- Q. Do you know that Mr. Wilno is boarding with 10 Loretta's people?
- A. I don't know where he is boarding.
- Q. Don't you know he is having his meals there?
- The Court—I don't suppose that will be contested. I don't see that you are getting anywhere by these questions.
- Q. Have you ever seen your brother in the company of Loretta Pizzuti?
- A. I live on Lamberton street.
- Q. It is just around the corner? 20
- A. No, that house is on Ferry. My house is on Lamberton street.
- Q. Did you ever speak to Loretta's mother?
- A. No, I wouldn't speak for my business.
- Q. What business?
- A. To make her son not go with my daughter any more.
- Q. Did you ever speak to her about her daughter going with your brother?
- A. No. 30
- Q. You never mentioned that to her?
- A. No, I didn't.
- Mr. Rimo—No questions.

Eugene Onorino, a witness produced on behalf of the defendant, being duly sworn through the interpreter, testifies, without interpretation, as follows:

Direct examination, by Mr. Cella.

- Q. You are the husband of the lady that just testified?
- A. Yes. 40

- Q. Do you remember being in Mr. Wilno's store when Loretta's father was there?
 A. Yes, both together.
 Q. Do you remember what was said there by Mr. Wilno to Loretta's father?
 A. No.
 Q. You didn't hear?
 10 A. No.
 Q. Did you talk with Mr. Pizzuti?
 A. What?
 Q. Did you talk with Mr. Pizzuti?
 A. No, I no talk.
 Q. Did you speak with Mr. Wilno?
 A. What?
 Q. Did you talk with Mr. Wilno?
 A. Yes.
 Q. What did you say to Mr. Wilno?
 20 A. Nothing.
 Q. Nothing? Did Mr. Pizzuti talk to Mr. Wilno?
 A. No answer.
 By the Court.
 Q. You say you talked to Mr. Wilno and then you say that you said nothing to Mr. Wilno. Why do you say that?
 A. I talked together.
 Q. What did he say?
 A. Who?
 30 Q. What did he say and what did you say when you talked with Mr. Wilno? What did he say and what did you say?
 A. No say nothing. Working to-day, this and that.
 Q. Who said that?
 A. Mr. Wilno.
 Q. What did you say?
 A. Nothing.
 Q. Then what do you mean by saying you
 40 talked to him?

- A. He asked me if I work; I said yes.
 Q. You said, "Yes?"
 A. Yes, sir.
 Q. Then why did you say you said nothing. I want to know all that was said between you. What else was said?
 A. Nothing; not say a word.
 Q. How long did you stay there? 10
 A. About five minutes.
 Q. You were there five minutes?
 A. Yes.
 Q. And nobody said anything at all during the five minutes?
 A. No.
 Q. Why did you stay there?
 A. I go for my boy.
 Q. Did you hear Mr. Pizzuti talk to Mr. Wilno about his daughter? 20
 A. No.
 Q. Didn't you?
 A. No.
 Q. Who else was in the store besides you, Mr. Pizzuti and Mr. Wilno?
 A. That's all.
 Q. Nobody else?
 A. No.
 Q. Are you sure?
 A. Sure. 30
 Q. Wasn't your boy there?
 A. Yes, he was there—come home with me.
 Q. Didn't you hear a conversation between Mr. Pizzuti and Mr. Wilno regarding the marriage of his daughter?
 A. No.
 Q. You didn't want to come here to-day, did you?
 A. Yes, I come yesterday, too.
 Q. You didn't want to come? 40

The Court—Never mind that. Mr. Cella, it will be no use sitting here listening to witnesses that don't know anything about this matter.

Mr. Rimo—No questions.

Daniel Richetti, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

10 Direct examination, by Mr. Cella.

Q. Mr. Richetti, you were served with a subpoena in this case a day or two ago, were you not?

A. Yes.

Q. And under the impression that you were served for the petitioner, you went to see Mr. Wilno, did you not?

A. Yes.

Q. You again called on Mr. Wilno last night?

A. Not last night.

20 Q. The night before?

A. The night before.

Q. You called on him the night before last?

A. Yes.

Q. What did you say to him?

A. I asked him who gave me that subpoena.

Q. What did he say?

A. And he told me he didn't subpoena no one from that corner of the neighborhood. I said to him, "If you didn't subpoena me it must have been your wife."

30 Q. What did you do?

A. So I went to work and went to Mrs. Wilno, and she tells me that she didn't subpoena me.

Q. Mrs. Wilno told you that?

A. Yes.

Q. That she didn't subpoena you?

A. That she didn't subpoena me.

Q. What did Mr. Wilno say about his wife?

40 A. Why, he said—he just said, "You better go over and see that dirty wife of mine." He said he didn't subpoena me.

Q. You also called to see me last night, did you not?

A. Yes, sir.

Q. In reference to being excused from attending this court?

A. Yes, sir.

Q. Do you know anything more about this case than you have stated?

A. Not any more. 10

Q. Did you know any more about this case last night when you said if I insisted upon you coming here today you weren't going to know anything about this case?

A. That's all.

Q. You didn't know any more last night when you made that statement than you have told?

A. No, sir.

Cross-examination, by Mr. Rimo.

Q. Are you stating to the court all that you know? 20

A. Yes, sir.

Q. Is there anything else that you know that happened since you received the subpoena?

A. That's all.

Q. You are positive of that?

A. Yes, sir.

Q. Nothing has happened?

A. No, sir.

Q. Isn't it true that you called me on the telephone? Did you call me on the telephone? 30

A. Yes, sir.

Q. And did you tell me over the telephone, "What does this subpoena mean?" Do you remember that?

A. Yes, sir.

Q. Do you remember my telling you I didn't subpoena you?

A. Yes, sir.

Q. And do you remember me telling you that the other side might have subpoenaed you?

The Court—He has said all that. 40

Catherina Bruno, a witness produced on behalf of the defendant, being duly sworn, through the interpreter, testifies through interpretation as follows:

Direct examination, by Mr. Cella.

Q. Where do you live?

A. 25 Swan street.

Q. How long have you lived there?

10 A. Ten years.

Q. Lived there ten years?

A. Yes, sir.

Q. Do you know Mr. Wilno and his wife, here?

A. I know them both but we lived some distance from one another.

Q. Do you know that Mr. and Mrs. Wilno have been having trouble and are now separated?

A. I know that they are separated.

Q. Do you remember, Mrs. Bruno, you remember
20 a year or two ago meeting Mr. Bruno on the street and asking him about his wife?

The Court—Mr. Wilno.

A. No, I don't know anything about that.

Q. What did you say to him?

Mr. Rimo—She says she didn't say anything.

The Court—She may answer.

A. It is about two or three years ago; I was passing
30 by the house and another woman was going with me. She was an older woman than I and she was the one that was talking with Mr. Wilno. I was listening.

Q. What is this woman's name?

A. Carmela is her first name. I don't know her last name. She lives near my house.

Q. Is she in the court room?

A. No, she wasn't subpoenaed.

Q. You didn't talk to Mr. Wilno?

A. No, that other woman was talking to him and I listened.

Q. Did you hear what was said?

40 A. Yes, sir.

Q. What did this woman say to Mr. Wilno?

A. She was talking to him about their separation and the children and he answered and said, "No, she isn't my wife any more."

Q. What else did Mr. Wilno say?

A. That's all. We were just passing.

Q. Did he use any vile names in referring to his wife?

A. No, I didn't hear anything more than what I told you, "She isn't my wife any more." 10

Cross-examination by Mr. Rimo.

Q. You say this was two or three years ago?

A. Yes, sir.

Q. Could it have been four years ago?

A. I don't know but that they had already separated.

Q. Where is his house?

A. South Trenton. 20

Q. Do you know what street?

A. I don't know neither the street nor the number of the house.

Re-direct examination, by Mr. Cella.

Q. Did you talk with Mrs. Wilno in the hall an hour or two ago?

A. No, I didn't speak to her.

Q. Didn't you go with Mrs. Wilno to lunch today?

A. Yes, I didn't know where to go. They took me. 30

Q. Didn't you have any conversation at all today?

A. No.

Q. Not a word?

A. Nothing at all.

Q. Didn't you say to Mrs. Wilno that on this occasion her husband called her a vile name?

A. She told me that I should testify all that I heard and I said, "Yes." That's all I testified to.

Q. Then you did talk to Mrs. Wilno at noon time, didn't you? 40

A. Well, she just told me not to be afraid but to tell what I had heard.

Q. And didn't you hear at that time him call his wife a vile name?

Mr. Rimo—I object to that as having been asked and answered.

The Court—The witness may answer.

10 A. Yes, sir; I told her.

Q. What did Mr. Wilno call his wife?

A. He said, "She isn't my wife any more because she is a bad woman." That's all.

Q. I want to know the exact word he used referring to his wife?

A. He said she was a bad woman, that's what he said.

By the Court.

Q. What is the Italian word?

A. A bitch.

20 Mr. Rimo—I would like to enter an explanation. What is the definition of butona?

The Interpreter—A woman of bad repute. A common public woman.

Mr. Rimo—Is it "whore?"

The Interpreter—Well, you might say that.

Joseph Calabrese, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

30 Q. Mr. Calabrese, where do you live?

A. 363 Lamberton street.

Q. What is your business?

A. Garage.

Q. Where is your garage?

A. 420 Bridge street.

Q. That is directly opposite where Mr. Wilno resides?

A. Not directly, not far from it.

40 Q. You have a clear view of his house, don't you, from your garage?

A. Yes.

Q. You can see it clearly?

A. Yes, sir.

Q. A little to the right?

A. Yes, sir.

Q. Do you know Loretta Pizzuti?

A. Just to see. I have seen her a couple of times.

Q. Do you know where she lives? 10

A. I know it's on Ferry street.

Q. That is also directly opposite your place of business, is it not?

A. I can't see her house from the place of business. I can if I go out the back way.

Q. Did you ever see Mr. Wilno in his automobile with Miss Pizzuti?

A. No, I don't know that I ever did see them.

Q. Do you recall, Mr. Calabrese, one Sunday, on the road from Trenton to Toms River, about eight miles 20 from Toms River, Mr. Wilno stopping his car on the road and talking with you?

A. Yes.

Q. At that time you saw Miss Loretta in that automobile, didn't you?

A. I didn't see her face. I wouldn't say it was her. He stood down the street.

Q. You talked with Mr. Wilno at that time?

A. Yes, he stopped and come up towards my machine.

Q. Did he tell you she was in the car? 30

A. No, he didn't.

Q. Did he tell you who was in the car?

A. No.

Q. What was the conversation about that you had with him?

A. He was just kidding, he said, "If I had seen you a half an hour sooner I would give you a good cold bottle of beer."

Q. Is that all?

A. That's all that was said. 40

- Q. Did you ever talk with Mr. Wilno about Loretta?
 A. No.
 Q. Did Loretta ever come into your garage?
 A. Never in my garage.
 Q. Did you ever speak to her?
 A. I never said a word to her. I don't know her to speak to.
- 10 Q. Mr. Calabrese, do you recall speaking with me about this case?
 A. Yes.
 Q. Do you recall telling me statements that Mr. Wilno had made with reference to Loretta Pizzuti, to you?
 Mr. Rimo—That is objected to.
 The Court—He may answer.
 A. I don't remember ever saying anything about the girl.
- 20 Q. You recall, do you not, telling me what Wilno, Mr. John Wilno, told you about Loretta Pizzuti?
 A. I don't know that I ever mentioned her name at all.
 Q. Well, did you ever mention the fact that Mr. Wilno was keeping company or going around with a girl across the street?
 A. I may have said that, yes.
 Q. And that is Loretta Pizzuti, is it not?
 A. I guess it is.
 Q. Then you do recall telling me what Mr. Wilno said about Loretta Pizzuti?
- 30 A. I didn't say he said that. I might have told you, thinking he goes with her. I heard so much around that neighborhood. That's the way I got it, I guess.
 Q. Do you know of your own knowledge that he goes with her?
 A. Only what I've heard. I can't prove it. I've heard several of them say it.
 Q. Then you do know that Loretta Pizzuti is the same girl about which Mr. Wilno spoke to you?
 Mr. Rimo—That is objected to.
- 40 The Court—Objection overruled.

- Q. (Stenographer repeats the question.)
 A. Mr. Wilno never spoke to me about the girl. From what I heard around the garage
 Q. Then you now say that you didn't tell me that Mr. Wilno spoke to you about this girl?
 A. Not that Mr. Wilno. I might have told you something about it but not as coming from Mr. Wilno.
 Q. Did Mr. Wilno ever say to you that he was going 10 to marry her?
 A. Never.
 Mr. Rimo—No questions.

Mary Kavacka, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination, by Mr. Cella.

- Q. Mrs. Kavacka, where do you live?
 A. Lamberton street.
 Q. What number? 20
 A. 408, next to Mr. Wilno's.
 Q. Do you go in Mrs. Onorino's house once in a while?
 A. Yes.
 Q. Do you remember being in there one time when Mr. Wilno was there or Loretta Pizzuti?
 A. Yes, sir?
 Q. Do you know her?
 A. Yes, sir?
 Q. Is that the girl (standing up)? 30
 A. I guess so.
 Q. When was this; how long ago?
 A. I don't know, something about January. I don't know, before March though, a little after Christmas maybe, maybe four weeks, some time. I don't often go there but right after Christmas, I think.
 Q. It was just this year, do you mean?
 A. Yes, after last Christmas.
 Q. And on that day what did you do?
 A. That is evening, not the day. 40

Q. That evening, what did you see?

A. My daughter sent me for something. I don't know what she sent me for, the key, and I went there and I saw Mr. Wilno in the kitchen and Loretta was in the kitchen and I saw this. He held her in his lap. She sat down, that's all I saw. I don't know nothing about it.

10 By the Court.

Q. You saw Loretta sitting in his lap?

A. Yes, she sat down in his lap.

Cross-examination, by Mr. Rimo.

Q. Where were you?

A. Who, me?

Q. Yes, when you saw this.

A. In the kitchen.

Q. Whose kitchen?

20 A. Mrs. Onorino's.

Q. Who is she?

A. His sister.

Q. What were you doing there?

A. I don't know. I went because it was right in the next door. I thought the kids might be playing. I didn't know. My daughter says, "Mom, go there." I didn't know what she sent me for but I went there and I saw.

Q. You say this was after Christmas.

30 A. Yes, sir; after Christmas.

Q. Don't you know that Mr. Wilno hasn't been in his sister's house since March?

A. Oh, I seen him lots of times.

Mr. Cella—That is objected to.

The Court—I don't see that it is of any importance. This was after Christmas and he hasn't been there since March.

Mr. Cella—With the exception of one or two witnesses I would like to call to rebut the testimony of a hostile witness—I would like to call them.

40

The Court—What do you want to show?

Mr. Cella—I want to show that Mr. Wilno on this occasion that Mrs. Wilno ran into Mrs. Catano's store ran after her and Mrs. Catano was present at the time and saw Mrs. Wilno in the condition that she was.

The Court—Well, you may show that.

10

Flossie Wilno, being recalled on behalf of the defendant, testifies as follows:

Direct examination, by Mr. Cella.

Q. Miss Wilno, do you recall the occasion that your mother ran into Mrs. Catano's store?

A. Yes, sir.

Q. And your father was chasing after her?

A. Yes.

Q. Was Mrs. Catano present at the time?

A. Yes, she was present at the time.

20

Q. What happened?

A. The same day I told you about it, saying that Pop was drinking heavily. Mom had an abscess on the arm and she was using some mercury tablets for it. He was drinking heavy and he took an overdose of the tablets and he had the rams. He just got up and down stairs and he didn't have any clothes on but his B. V. D.'s, and he was lying on the floor right in his B. V. D.'s, and we went out screaming when we seen him that way and he just had an axe in his hand and chased my mother out of the door and I tried to get somebody to help him when I seen him in that condition, which Red sent me into Mrs. Catano's and my mother just went to Elizabeth Fisher's house at the time and I went and the ambulance came and took my father. Before they took him he ran into Catano's store after my mother and he lifted a big barrel of potatoes and I can't remember who parted them and he wouldn't leave my mother go near his bedside in St. Francis Hospital which I stayed home and took care of the kids that day.

40

Q. Were you home when your mother and father were quarreling?

A. Yes.

Q. Do you know what the quarrel was about?

A. I don't just remember what the quarrel was about.

Cross-examination, by Mr. Rimo.

10 Q. Was this the time that your father took poison?

A. The same day.

Q. That same day?

A. Yes.

Q. You didn't say anything about taking poison, did you?

The Court—She said he took an overdose of tablets.

Q. Did you go and visit your father while he was in the hospital?

20 A. Yes, I always did.

Q. Always?

A. Always did.

Q. You knew about this yesterday, didn't you?

A. Yes, I knew it yesterday.

Q. You remember you were asked yesterday to tell the different times your father and mother had fights?

A. They didn't ask me.

Defendant rests.

30 *John Wilno*, being recalled in rebuttal in his own behalf, testifies as follows:

Direct examination, by Mr. Rimo.

Q. Mr. Wilno, you remember the witness who testified that she and another lady were passing your house two or three years ago, do you remember seeing that woman?

A. I don't even know the woman. I never saw the woman in my life until today, or yesterday, rather.

40 Q. Did you say to a woman that your wife was a bad woman?

A. I never remember saying anything. I don't use it.

Q. Do you remember saying to a woman about your wife, two or three years ago, the word "butona?"

A. I don't use it.

Q. Did you ever have taken from you by your brother Jim a revolver?

A. I never owned one in my life.

10

Cross-examination, by Mr. Cella.

Q. Mr. Wilno, you say that previous to yesterday you had never spoken or seen Mrs. Bruno?

A. That witness that was here?

Q. Yes.

A. Yesterday for the first time I ever did see her.

Q. You are positive of that?

A. Yes, sir.

Q. Mr. Wilno, you remember Mrs. Bruno testifying 20 down in the Mercer Court in your case?

A. I don't remember that.

Q. You don't?

A. No.

Q. Would you say she didn't testify?

A. I couldn't even tell you that. I don't remember seeing that lady.

Q. Would you say she didn't testify?

A. I say, I never saw the woman, Mr. Cella.

Q. Were you present at that trial?

30

A. I certainly was.

Q. You heard and saw all of them testify that was called?

A. I never saw that woman.

Q. I ask you if you were present during all the trial?

A. I certainly was.

Q. You saw every witness that took the stand testify for or against you?

A. There was only five or six witnesses during that trial.

40

- Q. Six?
- A. Five or six.
- Q. How many were there?
- A. Five or six; I just answered you.
- Q. Was it five or six?
- A. In that neighborhood.
- Q. Do you know just how many?
- 10 A. Five or six.
- Q. And that's all you know?
- A. Yes.
- Q. Can't you say to a certainty?
- A. All right, we'll say five.
- Q. Five?
- A. We'll say five. What's the use of me saying five if it were six.
- Q. How many witnesses did you have?
- A. I don't believe I had—I think I had one or two, if
- 20 I'm not mistaken.
- Q. You had one or two witnesses?
- A. Yes.
- Q. Do you know?
- A. I think so.
- Q. Who were your witnesses?
- A. I think one was my brother.
- Q. Who else?
- A. I can't recall the other.
- Q. Is that all?
- 30 A. I think so.
- Q. You don't recall any other witnesses?
- A. No.
- Q. No other witnesses you called for yourself?
- A. No.
- Q. Do you recall any of the state's witnesses?
- A. The state's witnesses?
- Q. Yes.
- A. The only one I remember is the state witnesses that I knew was Red, Mrs. Adolph Alferi and I can't
- 40 recall the other name.

- Q. You won't say now that Mrs. Bruno didn't testify, will you?
- A. Who?
- Q. That woman that was here.
- A. I don't remember ever seeing that lady.
- Q. You don't remember whether she did or not?
- A. No.
- Both sides rest. 10

Conclusions

BUCHANAN, V. C. (orally).

The petition is one for divorce. There is no prayer for relief by the wife; there is no counter-claim. There is a double defense, one is a denial of willful and obstinate desertion by her, and the separate defense of 20 adultery—alleged adultery by her husband not condoned by her. As to the latter the proofs are insufficient to show any such conduct by the husband, but on the other hand the proofs are insufficient to sustain the burden of proof which is cast upon the husband to show that the wife did willfully and obstinately desert him.

The testimony is in conflict as to what transpired and the causes and circumstances which attended the leaving by the wife. It is true the wife left, but a mere leaving 30 does not necessarily constitute desertion. It is not desertion if it is caused by the husband or if acquiesced in by the husband, and the proof is insufficient to show that it was a willful leaving by the wife without cause and without being acquiesced in by him.

The evidence is also insufficient to show reasonable advances to get her back. It is true the wife, under the evidence, made no effort to get back to the husband, but that is not important. She is not seeking relief here. The petition will be dismissed. 40

N. J. Court of Errors and Appeals

Between

JOHN WILNO, <i>Petitioner-Appellant,</i>	}	Appeal from Decree of Dismissal. 10
<i>and</i>		
ANNA WILNO, <i>Defendant-Respondent.</i>		

Brief for Petitioner-Appellant. 20

FACTS.

This is an appeal from a decree of the Court of Chancery dismissing a petition for divorce brought by John Wilno against his wife on the ground of desertion. (S. C., p. 7.) The defendant filed an answer denying the desertion. (S. C., p. 10.) The answer has no prayer for relief by the wife; there is no counter-claim. There is a double defense, one is a defense of willful and obstinate desertion by her, and the separate defense of adultery, alleged adultery by her husband, not condoned by her. As to the latter, the proofs and the conclusions of the Vice Chancellor show that there is not sufficient proof of the adultery. 30

The facts of the petitioner's case were, in brief, as follows: The petitioner and the defendant were married July 26th, 1903, in Trenton, New Jersey. Marriage and residence were proven, and, after residing at numerous places in the city of Trenton, they finally went 40

to live together at No. 409 Bridge street, Trenton, New Jersey, at which place they were living when the defendant, Anna Wilno, deserted the petitioner. The defendant had left the petitioner upon numerous occasions prior to this last occasion of October, 1923, and the petitioner always sought the return of his wife, the defendant, and petitioner and defendant did actually resume cohabitation. One week before October 7th, 1923, the defendant, according to her testimony, went out and looked for a house and got a room at No. 5 Chancery Place, and later, the following Saturday, which was October 7th, 1923, the defendant ordered one Michael Papero, who was in the express business, to move her furniture (S. C., p. 65), and the defendant paid for the moving herself. When defendant was moving the furniture, with the help of the expressman, the petitioner was at home, and stated to his wife (S. C., p. 36), "Listen, don't do it for my sake; do it for the kids' sake." The defendant replied, "I'll tell you, if you don't go away from me, it'll be an undertaker taking you." (S. C., p. 36.) On August 4th, 1924, the defendant made a criminal complaint against her husband before Patrick H. Pone, Justice of the Peace, which was that on October 7th, 1923, the petitioner, John Wilno, deserted her and the children, and the petitioner was later tried and ordered to support the children but not his wife, the defendant. (S. C., p. —.) During the trial of the criminal case the defendant was asked if she would return to live with her husband should he ask her to and be willing to resume cohabitation with him, and she replied that she was not willing to return (S. C., p. 13), by testimony of Judge Erwin E. Marshall and by County Detective James S. Kirkham. (S. C., p. 16.) During the trial the petitioner, John Wilno, was asked if he would take his wife back to live with him and resume cohabitation, and he said that he would, testimony given by Judge Erwin E. Marshall (S. C., p. 13), County Detective James S. Kirkham (S. C., p.

16), and testimony by John Wilno. (S. C., p. 36.) During the trial the expressman testified that the defendant, Anna Wilno, went to his house and asked him to move her, and the mover heard the petitioner, John Wilno, say, "If you are leaving, you will stay for the kids' sake anyhow" (S. C., p. 25), and the defendant, Anna Wilno, paid the expressman for the moving. (S. C., p. 26.) The petitioner attempted upon numerous occasions to have his wife to return with him, even after he so stated during the criminal trial, but the defendant prevented the petitioner from going to see her. (S. C., p. 39.)

POINT ONE.

THE DESERTION WAS WILLFUL, CONTINUED AND OBSTINATE.

The testimony in the case is clear that the wife, Anna Wilno, left and deserted the petitioner. That is testified to by the petitioner (S. C., p. 36), and testified to by the defendant, who ordered the removal of the furniture, by going to the expressman a few days before the removal actually took place, fixing a time when the furniture was to be moved, helping in the moving, and directing the expressman the house to which the goods were to be removed (S. C., p. 25), and to show strongly, the defendant was making up her mind to willfully desert and to continue the desertion with obstinacy, the defendant, Anna Wilno, made a criminal complaint against her husband for deserting her and the children, and during the trial the defendant, Anna Wilno, was asked if she would resume cohabitation with her husband, and the reply was that "she would not," testimony given by Judge Erwin E. Marshall and County Detective James S. Kirkham. (S. C., pp. 13-16.)

Surely, if there had not been any criminal complaint made, there might have been some question as to the obstinacy of the desertion, but when a criminal complaint

is made, charging actual desertion on the part of the husband, when the facts were such, it was she, the wife, the defendant in the divorce, who actually deserted, showed, without doubt, a conclusion, which was decisive, not only of causing her husband considerable trouble and embarrassment, but also to make it unlikely or hardly necessary to attempt to reconcile, and thereby
 10 made her desertion obstinate from the very beginning; then, too, the fact that she had prepared a few days before for the removal of the furniture, without telling her husband, and chosen the place where she was to move, and got the expressman to move and paid the expressman, leaves no room for doubt as to the willfulness of the desertion

Later, after the trial in the criminal case, the petitioner, John Wilno, and the probation officer, William N. Morrison, went to the house of the defendant, Anna
 20 Wilno, and while there the defendant, Anna Wilno, cursed and swore at the petitioner, and ordered him out of the house, again showing that her desertion was obstinate. (S. C., p. 20.)

The proofs show that the defendant looked for a house a few days before she actually moved, and upon the day of the moving, nothing had occurred which justified her leaving, and upon the day of the moving the defendant was asked of the petitioner, her husband, to stay for the sake of the children, at least, if she did not
 30 care to stay for his sake, with all that, he was corroborated in the statement by disinterested witness, the mover, she, nevertheless, continued to move and actually left, showing that her desertion was willful. The fact that she had left many times before, according to her own testimony, and then afterwards resumed cohabitation, also tends to show more clearly that she would get periodical fits when her mind labored toward deserting him, and, upon the final desertion, it can be fairly argued and said, that she made little or no attempt at all
 40 to ever go to the house from which she left finally, and

the fact that she never wrote or sent anyone to attempt to make up and resume cohabitation, again clearly shows that her original leaving was willful and that her continued stay and abandonment for the statutory period was most obstinate.

"Where a husband has, by his conduct towards his wife, contributed to her desertion of him, such desertion, ordinarily, will not be considered obstinate unless
 10 persisted in by the wife against the effort of the husband to terminate it by making such advances and concessions as might reasonably be expected to bring about that result. But where it is manifest from the facts in that case that honest effort by the husband to bring the separation to an end would be unavailing, or only temporarily successful, the duty of making it ceases to exist." *Hall v. Hall*, 60 N. J. Eq. 469; 135 Atl. Rep. 793; *Davenport v. Davenport*, 127 Atl. Rep. 29; *Baulbey v. Baulbey*, 10 C. E. Gr. 406; *Trall v. Trall*, 5 Stew. Eq. 20
 231.

POINT TWO.

THE SEPARATION WAS AGAINST THE WILL OF THE HUSBAND.

As already has been stated, the defendant-wife left, which was admitted by her in her testimony, after she had located a place where she was going to move and during the moving, she was asked to stay by the petitioner, her husband, but she continued to take out the
 30 furniture and finished her moving, thereby disregarding his request to stay, showing that the husband did not acquiesce in her moving, and, therefore, her moving was willfully against the will of the petitioner-husband, and not acquiesced to by him. S. C., p. 36. *Hall v. Hall*, 60 N. J. Eq. 469; 135 Atl. Rep. 793; *Davenport v. Davenport*, 127 Atl. Rep. 29; *Baulbey v. Baulbey*, 10 C. E. Gr. 406; *Trall v. Trall*, 5 Stew. Eq. 231; *Smith v. Smith*, 123 Atl. Rep. 738.
 40

POINT THREE.

"Where wife leaves husband through any cause of a trivial character, contributed by the husband, it is the duty of the wife to seek reconciliation, unless the contributing cause was of such a character as to place her life in peril and danger should she return."

10 The defendant-wife had left her husband numerous times prior to the last desertion, and he always appeared willing to have her return and did resume cohabitation. The contributing cause, if any, of her leaving the last time was not justified, and had she desired to have things appear that it was not willful, nor continued, nor obstinate, she might have in some way tried to effect a reconciliation. There was no testimony in the case which showed that to have returned would have placed her life in peril and danger or affect her nervous system, and the fact that she made no such attempt would tend to show that her original leaving was willful and that her continued abandonment was obstinate.

POINT FOUR.

"Husband need not make advances for the return of the wife, even though his conduct toward her contributed to her desertion of him to effect a reconciliation or ending the separation when it would be unavailing, or temporarily successful, the duty of making it ceases to exist."

30 It was the wife-defendant who left under circumstances, as she says, where the husband-petitioner contributed to her leaving him, which circumstances were denied by the petitioner-husband, and after the leaving, she instituted criminal action under which he was arrested, claiming that he deserted her, in order to have him adjudged guilty as a criminal when the fact admitted by her in the testimony in the case is that she deserted him, and the doing of such an act clearly displayed an intention upon her part to make her leaving

willful, her continued abandonment obstinate and to make advances or concessions unavailing; in fact, such a conduct would tend to show that she preferred putting him away, or doing something with him that would make it impossible or unlikely for him ever to return with her, but the testimony, in the case of the petitioner (S. C., p. —), is that even though she left without cause, and even though she arrested him under which 10 complaint he was tried, no support was ordered for her, however, by the court. During the trial he, nevertheless, was willing to resume cohabitation, and during the trial, when the defendant-wife was asked if she was willing to return, she replied she would not, all of which conduct and circumstances would show clearly, without need for further proof, that any further advances or concessions would be unavailing, and, if of some avail, for only a temporary period, for it was testified to by the defendant-wife during the hearing (S. C., p. 76), that she 20 had left before, more than once and had later returned. Assuming that he had made no advances at any time or concessions at any time, and assuming that during the trial he had not testified of his willingness to return, it would still seem that the petitioner-husband need not be called upon as a matter of law, to make advances or concessions. *Hall v. Hall*, 60 N. J. Eq. 469; *Davenport v. Davenport*, 127 Atl. Rep. 29; *Baulbey v. Baulbey*, 10 C. E. Gr. 406; *Trall v. Trall*, 5 Stew. Eq. 231; *Smith v. Smith*, 123 Atl. Rep. 738. 03

POINT FIVE.

COURT BELIEVED TESTIMONY WHICH WAS IN CONFLICT.

Defendant-wife testified of an occurrence between her and her husband, and in one place testified that it occurred September 7th, 1925, and in another place she testified it was on September 28th, 1923. (S. C., p. 66.) Her testimony was not corroborated by anyone 40

and denied by the petitioner, and, evidently, court gave credence to her testimony, when it should have been discarded entirely, which would have left the petitioner's testimony genuinely true of itself. And because of the credence given to defendant's testimony by the court, the petition was denied, when it should have been allowed and a divorce granted.

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POINT SIX.

Desertion acquiesced in by the other spouse can only mean that the other spouse, either through conduct or in some other, was a willingness to cause the desertion or have it to continue, or if, on the other hand, words or actions disclose an unwillingness for the desertion to begin, to continue when begun, cannot bring conclusion that the desertion was acquiesced in.

20

Upon the day that the defendant-wife left, which was after she had determined, some time before, to actually go, the petitioner-husband was present and asked her to remain, or not to go, if not for his sake, at least for the sake of the children, and in this testimony given by the petitioner there is corroboration by a disinterested witness, namely, the mover, who heard the petitioner make such remarks as he so testified as a witness called by the petitioner. (S. C., p. 25.) Statements as testified to by the petitioner, and again corroborated by a disinterested witness, in fact a witness who had been called into the picture by the wife, who was the moving party, should be given great consideration and weight since they come at a time when the mind speaks as the heart feels, and the request on the part of the husband, coming when the wife was leaving, for the sake of the children to have her remain, and for her to have deliberately disregarded such plea or request, could, in no sense, cause anyone to infer or conclude that he acquiesced in the moving or desertion.

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POINT SEVEN.

OBSTINACY ON THE PART OF DEFENDANT SHOWN AT LEAST THREE TIMES.

(a) When defendant-wife decided to leave some time before she actually left.

(b) Making of the criminal complaint for his arrest for deserting her and children, and actually pressing the complaint to trial, and even during the trial when she was asked if she would be willing to resume cohabitation, for her to have said that she would not.

10

(c) Having had reported to her by her father that the husband was around looking for her and stating at the divorce hearing that she did not intend to look for him or go after him, or words to that effect (S. C., p. 86), clearly shows—

First, that she did not desire to resume cohabitation and making the desertion obstinate, and

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Secondly, proving or corroborating the petitioner when he says (S. C., p. 40), that he looked for her numerous times, went to the house, was refused admittance, and when upon the street the defendant-wife saw to it that she avoided him, all of which clearly shows an intention on her part when she left to have it willfully considered or considered as willful, and to have it to remain through her obstinacy.

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POINT EIGHT.

COURT'S TESTIMONY TO BE FIRMLY BELIEVED AND GIVEN WEIGHT AND EFFECT.

It was testified to by Judge Erwin E. Marshall that petitioner-husband was asked if he desired to take his wife back should she care to return, and that the petitioner testified to his willingness (S. C., p. 13), and further testified that when petitioner was to be sentenced, that the petitioner again stated that he desired

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the return of his wife, all of which supports the petitioner when he says that he sought the return of his wife after the criminal trial, and should cause a court to give credence and weight to the truth of his testimony.

POINT NINE.

10 DESERTION BY WIFE WAS NOT JUSTIFIED IN LAW.

Testimony by petitioner (S. C., p. 37), as well as by wife-defendant (S. C., p. 76), was to the effect that the wife had deserted the petitioner upon numerous other occasions, when the petitioner either took her back by seeking her return or through others who managed to have her return, and, finally, just before her leaving, defendant testified to a occurrence uncorroborated against the denial of the petitioner, and shortly after the occurrence the wife left.

20 There was no proof offered by the defendant-wife of the husband's conduct to show that it would endanger her life or health and render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, and in order to show an offense that would justify her to leave, it is duty on her part to prove convincingly that her life was in danger or that her health was or would have become imperiled or would have become wretched so much as to incapacitate
30 her to discharge the duties of the wife. *Doty v. Doty*, 114 *Atl. Rep.* 546; *Linnekkogel v. Linnekkogel*, 122 *Atl. Rep.* 372.

POINT TEN.

The defendant-wife having accused her husband of adultery and failed in her proofs under such accusations, in not only an attempt at extreme cruelty, but also a clear and convincing element to show her mind was
40 formed with the intent to leave willfully and the intent

to continue for the statutory period as she did and have it to remain obstinate. This, of course, is a matter of law in itself under extreme cruelty for a husband to charge his wife with committing adultery and unable to prove, or for a wife to charge her husband with committing adultery and unable to prove same, such accusation, which is groundless, does go a great distance toward setting a judicial mind that the one who charges the
10 other has a very unsettled state of mind, and when it is shown the latter, that the person who has actually and willfully left, meant to have done exactly what was done and fully intended that it was to remain such as did occur in the case at bar.

CONCLUSION.

Counsel respectfully submits that from the evidence of the wife leaving unjustifiably and causing the arrest of
20 the husband upon criminal complaint, alleging that he deserted her, when, in fact, she deserted him, showing a depraved mind, and that she was unwilling to resume cohabitation, and that she was unwilling to seek to attempt to reconcile, and her deliberate accusation shown in her answer to the petition of divorce, charging her husband with adultery, which was not proved, as is shown by the oral opinions of the Chancellor that the petitioner was entitled to a decree of divorce in this cause on the ground of desertion, and, therefore, prays that a decree be en-
03 tered upon remittitur, granting a divorce to the petitioner.

Respectfully submitted,

ROMULUS P. RIMO,
Of Counsel with Petitioner-Appellant.

POINT ELEVEN.

DEFENDANT WIFE, AS A MATTER OF LAW, DESERTED PETITIONER IN DECEMBER, AT THE TIME OF THE TRIAL WHEN SHE WAS ASKED IF SHE WOULD RETURN WITH HER HUSBAND, AND REPLIED THAT SHE WOULD NOT.

The conclusions of the Chancellor seem to have been based upon her leaving in October, but the petition for divorce charges the desertion, as a matter of law, in December, since it was then that the husband requested her return and she refused, although, it could be said, as a matter of law, that the refusal made the original leaving in October, the time of the desertion, and from that time on, the desertion was not only obstinate, but continued.

C., p. 10), and alleged in said answer that the petitioner deserted the defendant in that he forced the defendant and their minor children out of his house on October 7, 1923, from which time the defendant has ever since lived apart from the petitioner who has never sought her return to him (S. C., p. 10). Petitioner by the true intent and meaning of the statute in such case made and provided has willfully, continuedly and obstinately deserted the defendant. There is also a separate defense of adultery by her husband, not condoned by defendant. The answer alleges (S. C., p. 11) that the defendant had eleven children, and that there are now living seven children. The defendant states that the ages of three of the seven children as alleged in the petition were untrue in that Anna Wilno, designated as fourteen years of age, is seven years of age; that John Wilno, designated as twelve years of age, is ten years of age; and Anthony Wilno, designated as ten years of age, is four years of age. Defendant admits that all of the children except Rose, who is married, are in her custody. As to the desertion alleged by the petitioner, the conclusions of the Vice-Chancellor show (S. C., p. 149) that the proof is insufficient to show that it was a willful leaving by the wife without cause and without being acquiesced in by him and that the petitioner did not make reasonable advances to get the defendant back; hence the petition was dismissed.

The facts of the case were, in brief, as follows: The petitioner and the defendant were married July 26, 1903, in Trenton, New Jersey. The defendant-respondent admits that the marriage and residence were proven but denies that she deserted the petitioner. On the contrary, the defendant, Anna Wilno, was compelled by the petitioner to leave her home under threats and in fear of bodily injury at the hands of her husband (S. C., p. 72), and because he ordered her out (S. C., p. 65). The defendant admits that she had left the petitioner upon numerous occasions prior to this last occasion in Octo-

ber, 1923, but avers that she left involuntarily and only after her husband put her out (S. C., pp. 76-77). Whenever the petitioner had sought the return of his wife, after throwing her out of his home, and assured her that he would treat her with more respect and would not beat her in the future, she would return to her husband and resume cohabitation. It is true that a few days before October 7, 1923, the defendant went out and looked for a house and got a room at No. 5 Johnson Place, and moved there (S. C., p. 65), but the testimony is that she moved at the direction and command of her husband (S. C., pp. 65-66). It is true that the defendant ordered one Michael Papero, who was in the express business, to move her furniture (S. C., p. 25). The defendant denies that at the time of the moving her husband asked her to stay for the children's sake. It is a significant fact that the expressman, a witness for the petitioner, heard and knew of no other conversation between the petitioner and defendant except the words, "Well, if you are leaving you will stay for the kids' sake, anyhow" (S. C., p. 25), and when questioned by counsel for defendant as to why he did not tell that fact to the counsel for the petitioner some months previous to the trial of this cause when he made an affidavit filed in this cause, he stated, "I don't know" (S. C., p. 28). The facts are that at the time of the moving of the furniture by Mrs. Wilno, Mr. Wilno was in the house the entire time. There is no evidence that he endeavored to restrain the expressman from taking any of the furniture or that he said anything whatever to the expressman. The only evidence that the petitioner has in this case to the effect that he made some remarks to his wife to stay for the children's sake is that made by the expressman Michael Papero as above set forth, who states that he heard that one sentence and nothing else. This testimony is contradicted by the defendant who testified that on the day of the moving on October 7, 1923, and for a week prior to that time the petitioner

would not and did not speak to the defendant (S. C., pp. 66-67). The testimony of the expressman and the petitioner is also contradicted by the daughter of the petitioner and defendant, Flossie Wilno, who testified that her father ordered her mother to leave (S. C., p. 91), and that her father never asked her mother to stay for the children's sake (S. C., pp. 96-97). It is clear that the petitioner did not ask the defendant to stay on the day that she was moving as he did not even speak to her on that day (S. C., pp. 66-67). It is true that on August 4, 1924, the defendant made a criminal complaint against her husband before a Justice of the Peace alleging that on October 7, 1923, the petitioner, John Wilno, deserted her and the children. The petitioner was later tried in the Mercer County Quarter Sessions Court on December 22, 1924. John Wilno was found guilty by the jury, and later sentenced by the Judge of the Mercer County Quarter Sessions Court and placed on probation. The defendant denies that at the trial of the criminal case in 1924 she stated that she was not willing to return with her husband (S. C., p. 78). She stated, "I will in one way, but in another way I don't think he will take me back." The testimony of Judge Erwin E. Marshall is to the effect that it was his recollection that she was not willing to go back to live with her husband, "and then she assigned the reason why she was not" (S. C., p. 13). The testimony of Judge Marshall is to the effect that Mrs. Wilno assigned reasons but that he did not recall the exact language and that the effect of it was that she said that if he did take her back, he would only use her as a house rag (S. C., p. 14). The testimony of County Detective James S. Kirkham, a witness for the petitioner, is to the effect that Mrs. Wilno would not return to live with her husband because she said that her husband had thrown her and the children out and assigned other reasons as well (S. C., p. 17). Detective Kirkham in his testimony stated at the criminal trial that Mrs. Wilno was bitter against her

husband in relating to his treatment of her (S. C., p. 17). The defendant, Anna Wilno, does not know whether her husband was asked during the criminal trial in 1924 whether he would take his wife back to live with him. The defendant, Anna Wilno, knows that at no time since October 7, 1923, after her husband compelled her and her children to leave, did her husband make reasonable advances to get her back (S. C., p. 67). The defendant, Anna Wilno, testified that her husband had never asked her to return to him since October 7, 1923; that he had never sent anybody to ask her to return to him; and that she never received any letters from him asking her to return (S. C., p. 70). The petitioner, John Wilno, admitted in his testimony that he never wrote to his wife to take her back (S. C., p. 48), and further admitted that on one particular occasion when he accompanied Mr. Morrison to the home of the defendant, Anna Wilno, that his daughter Flossie said, "If you take the kids, Pop, why don't you take Mom?" and he answered, "I am too glad to take you all but look, if you are going to live that way, it would only be the same thing over and over again. Now, if you can satisfy me that you can calm your mother, which there is only one or two more days of the biggest holiday of the year, I am only too glad to receive you" (S. C., p. 48). The testimony of the defendant, Anna Wilno, as to what took place at the time her husband and Mr. Morrison came to her home in February, 1926, when the petitioner came to get the children to take them to a place with heat at the request of the defendant, was that Mr. Morrison, a probation officer, told Mr. Wilno that his wife would like to have heat for her too, and the petitioner answered that the defendant couldn't come around to his place (S. C., p. 79). Flossie Wilno, the daughter of the petitioner and defendant, testified as to what took place on the occasion that Mr. Morrison and her father came to her mother in February, 1926, for the purpose of taking the children to give them heat,

she said, "Listen, Pop, as long as you are taking the children, why not take Mom?" and her father answered, "I wouldn't take your mother back for a gift" (S. C., p. 92). William N. Morrison, probation officer of Mercer County, a witness for the petitioner, testified as to the occasion when he went with the petitioner to the home of the defendant, Anna Wilno, in February, 1926, for the purpose of getting the small children and being questioned by counsel whether he remembered the petitioner as saying that he did not want her to be around his place of business as she would interfere with same, answered, "He always claimed about that, that she came around to his business place and interfered with the business." Upon further questioning by counsel, Mr. Morrison, a probation officer, answered, "Well, when he was going to take the child, she asked leave to see the children. He told her he didn't want her to come down and interfere with the business" (S. C., pp. 22-23). Upon further questioning, counsel said to Mr. Morrison, "You have taken an affidavit in which you said, I have seen and talked with John Wilno a number of times, and he has never told me or expressed a desire that he wanted to have his wife back with him and provided for by him?" and Probation Officer Morrison replied, "Yes, I don't believe he ever did" (S. C., p. 23). Under direct examination Probation Officer Morrison was asked by counsel, "Do you recall Mr. Wilno having been himself at the house to take her back?" The answer was, "I don't know whether he was or not" (S. C., p. 20). The testimony is that the petitioner, John Wilno, did not take his children back. The testimony of the defendant, Anna Wilno, is that when the baby was dressed and handed to its father, the petitioner said, "If your mother had a heart, she wouldn't let me have the children," which resulted in the defendant grabbing her child back (S. C., pp. 79-80). The testimony of Flossie Wilno is to the same effect and she testifies that her father said to her mother, "If you had a good heart you

wouldn't give me this kid" (S. C., p. 92). Probation Officer Morrison's testimony to the effect that the defendant became hostile towards petitioner was after the petitioner, John Wilno, had made some remarks to his wife that caused her to grab her child back, and in answer to the question propounded by the court, "Things were amicable until the time he made some remark?" Mr. Morrison answered, "Yes" (S. C., p. 22). The defendant denies that at the time of the moving, her husband asked her, "If you are leaving, you will stay for the kids' sake, anyhow" to which the expressman testified. When the expressman was questioned by counsel for defendant as to why he did not tell that fact to the counsel for the petitioner some months previous to the trial of this cause when he made an affidavit filed in this cause, he stated, "I don't know" (S. C., p. 28). The facts are that at the time of the moving of the furniture by Mrs. Wilno, Mr. Wilno was in the house the entire time. There is no evidence that he endeavored to restrain the expressman from taking any of the furniture or that he said anything whatever to the expressman. The only evidence that the petitioner has in this case to the effect that he made some remarks to his wife to stay for the children's sake is that made by the expressman, Michael Papero, as above set forth, who states that he heard that one sentence and nothing else. This testimony is contradicted by the defendant, who testified that on the day of the moving on October 7, 1923, and for a week prior to that time the petitioner would not and did not speak to the defendant (S. C., pp. 66-67). The testimony of the expressman and the petitioner is also contradicted by the daughter of the petitioner and defendant, Flossie Wilno, who testified that her father ordered her mother to leave (S. C., p. 91), and that her father never asked her mother to stay for the children's sake (S. C., pp. 96-97). It is clear that the petitioner did not ask the defendant to stay on the day that she was moving as he did not even speak to her on that day (S. C., pp. 66-67).

The defendant denies that the petitioner attempted upon numerous occasions to have her return to him and defendant avers that at no time did the petitioner make any reasonable advances to her for the purpose of a reconciliation or a request that she resume cohabitation with him (S. C., p. 67). The defendant, Anna Wilno, further testified that her husband had never asked her to return to him since October 7, 1923, and that nobody came to her requesting her to return to him; and that the petitioner had never written any letters to her asking that she return (S. C., p. 70). The defendant denies that she prevented the petitioner from coming to see her. On being questioned by counsel for petitioner, as to whether or not she was willing to have her husband, the defendant, Anna Wilno, replied, "I never refused" (S. C., pp. 80-81). While the defendant's proofs of adultery committed by her husband were insufficient, it is a significant fact that though the petitioner was charged with committing adultery with one Loretta Pizzutti in the answer (S. C., p. 11), it is a significant fact that while Loretta Pizzutti was in the court room during the entire trial of this cause, she never took the stand nor was called by the petitioner to rebut any of the testimony which involved her. Mary Kavacka testified that she lived next door to the house in which the petitioner boarded with his sister (S. C., p. 143), and that she saw this Loretta Pizzutti sit in the petitioner's lap (S. C., p. 144). Counsel for defendant propounded a question to the petitioner, "You commenced boarding there (referring to the Pizzutti home), after an answer had been filed in this case by Mrs. Wilno, charging you with adultery with this girl, isn't that a fact?" (S. C., p. 52). The petitioner admitted that he went there after he filed his petition (S. C., p. 53). The testimony of Flossie Wilno shows that as a result of getting letters in reference to scandal pertaining to the petitioner with Loretta Pizzutti she went in company with her sister Mary Wilno to the home of Loretta Pizzutti (S. C., p. 94).

where she found her father with her and after telling Loretta about the scandal, Loretta in the presence of the petitioner told the petitioner's daughter Flossie Wilno and her sister, "I like your father and I am going to marry him." The petitioner answered, "I served your mother with divorce papers." His daughter Flossie then retorted, "Yes, that is the notice, but you didn't get the divorce yet" (S. C., p. 95). The testimony of Mary Wilno is to the same effect that she and her sister went to the home of Loretta where she found her in the presence of Mr. Wilno (S. C., p. 100). The result was a fight started and the petitioner's daughters were put under arrest by their father, the petitioner (S. C., p. 101). Other witnesses such as Gaetano Franco (S. C., pp. 109-110), and Joseph Calabrese (S. C., p. 141), were hostile and would not testify. The testimony is that the petitioner beat the defendant very cruelly, continuedly and with no justification during the time that petitioner and defendant lived together and especially so the four years preceding the separation when the petitioner finally ordered the defendant to leave (S. C., p. 65). The testimony of the defendant, Anna Wilno, shows that prior to the time that she was compelled to leave her home, October 7, 1923, her husband refused to permit her to share his bed and she was forced to sleep with her daughter on a cot (S. C., pp. 70-71). The defendant's life was in constant danger as the petitioner threatened her with bodily injury and would strike her with different implements and utensils (S. C., p. 72). Instances of the petitioner's cruelty in beating the defendant and putting her out of the home are related by the defendant who testified that she was asked by a Police Court Judge to give him another opportunity (S. C., p. 76), and that soon after her return the petitioner beat the defendant and threw her out again when the Police Court Judge ordered the petitioner's arrest when the defendant showed him her black eye and told

him that her husband beat her again and ordered her out of the house with the baby (S. S., p. 77).

ANSWER TO POINT ONE.

Defendant Denies Desertion and Alleges Petitioner Guilty of Constructive Desertion.

The testimony in this case is that the defendant-wife, Anna Wilno, did not desert the petitioner-husband. On the contrary, the preponderating testimony shows that the petitioner forced the defendant and their minor children out of his house on October 7, 1923, and by the true intent and meaning of the statute in such case made and provided, the petitioner is the one guilty of desertion. The testimony of the defendant is that a week prior to the time she moved from the petitioner's home, the petitioner approached the defendant and directed and commanded her to move from their abode at 409 Bridge Street, Trenton, New Jersey (S. C., p. 65). The petitioner at that time told the defendant that he had something to tell her and that he knew it would make her feel bad and that the best thing for her was to get a house and move. When the defendant asked what she did, the petitioner answered, "I have somebody better than you. I might as well tell you right now." After making a threat to shove her out into the street, the petitioner got hold of the defendant's arm and dragged her as far as the front porch and after throwing her off the front porch, walked into the house (S. C., p. 65). The testimony of the defendant is corroborated by the daughter of the petitioner and defendant, Flossie Wilno, who testified (S. C., p. 90), that the petitioner used to drink "an awful lot"; that the petitioner always struck her mother and that she always had to part them (S. C., p. 90); that she was present when her father ordered her mother to leave (S. C., p. 91). The testimony of the defendant is also corroborated by another daughter of the petitioner and defendant, Mary Wilno, who testi-

fied (S. C., p. 99), that her father always hit her mother and that when she got home from work she would find her mother with "bloody noses and black eyes" (S. C., p. 101). The testimony of the defendant herself shows that prior to the time that she was compelled to leave her home on October 7, 1923, her husband refused to permit her to share his bed and she was forced to sleep with her daughter on a cot (S. C., pp. 70-71). The defendant's life was in constant danger as the petitioner threatened her with bodily injury and would strike her with different implements and utensils (S. C., p. 72). The testimony of the defendant shows that on the occasion when a Police Court Judge asked her to return after she was put out of the house to give him another opportunity (S. C., p. 76), that soon after her return the petitioner beat the defendant and threw her out again when the Police Court Judge ordered the petitioner's arrest upon the defendant showing him her black eye and telling him that her husband beat her and ordered her out of the house with the baby (S. C., p. 77). It is clear from this line of testimony that the petitioner had no love or affection for the defendant and wanted to get rid of her which desire was finally accomplished when a week prior to October 7, 1923, he ordered the defendant out of his home (S. C., p. 65), and that on the day of the moving on October 7, 1923, the petitioner helped the defendant to move by taking down the pictures from the walls and said out loud while the defendant was in the room packing with her children but not talking to the defendant, "Don't forget and take this along with you, for I don't want nothing that belongs to you," and with that expression he threw the pictures on the floor (S. C., p. 67). The testimony of the defendant shows also that the petitioner did not ask her to stay on the day that she was moving and since she was ordered out of the home, a week prior to October 7, 1923, the petitioner did not speak to her (S. C., pp. 66-67). The daughter of the petitioner and defend-

ant, Flossie Wilno, testified that on the day that they were moving her father and mother were not speaking to each other (S. C., p. 97). There is no evidence that the petitioner endeavored to restrain the expressman from taking any of the furniture or that he endeavored to restrain his wife and children from leaving. It is true that the defendant hired an expressman to move her, but the testimony of the defendant (S. C., p. 65) is that she was directed and compelled to get out. It is clear that her leaving was by the compulsion and acquiescence of her husband; that she did not leave the home willfully but that her leaving was involuntarily. It is also clear for the reasons above stated that the fact that she remained away from him was not obstinate but was for sufficient cause in that her husband had continually beaten her and finally forced her to leave on October 7, 1923. The petitioner never made any reasonable advances to the defendant asking her to return (S. C., p. 67), but on the contrary, the testimony shows that the petitioner never cared for his wife and did not want to resume cohabitation with her. The testimony of Catherina Bruno shows that she was in company with another woman who stopped and talked to Mr. Wilno about the separation between himself and his family and Mr. Wilno answered, "No, she isn't my wife any more" (S. C., p. 139). The defendant, Anna Wilno, testified that her husband had never asked her to return to him since October 7, 1923 (S. C., p. 67); that he had never sent anybody to ask her to return to him; and that she never received any letters from anybody asking her to return (S. C., p. 70). The petitioner, John Wilno, admitted in his testimony that he never wrote to his wife to take her back (S. C., p. 48). The testimony of the defendant, Anna Wilno, as to what took place at the time her husband and Mr. Morrison came to her in February, 1926, for the purpose of taking the children to his home to give them heat, was that Mr. Morrison, a probation officer, told Mr. Wilno

that his wife would like to have heat for her too, whereupon the petitioner answered that the defendant could not come around to his place (S. C., p. 79). Flossie Wilno, the daughter of the petitioner and defendant, testified as to what took place on that occasion when Mr. Morrison and her father came to their house in February, 1926; she said, "Listen, Pop, as long as you are taking the children why not take Mom?" and her father answered, "I wouldn't take your mother back for a gift" (S. C., p. 92). William Morrison, the probation officer, a witness for the petitioner-husband was questioned by counsel for defendant as to whether the petitioner had stated that he didn't want his wife around his place of business, which is his home as well, as she would interfere with same, and Mr. Morrison answered, "He always claimed about that, that she came around to his business place and interfered with the business." Upon further questioning by counsel, Mr. Morrison answered, "Well, when he was going to take the child (referring to February, 1926), she asked leave to see the children, he told her he didn't want her to come down and interfere with the business" (S. C., pp. 22-23). Upon further questioning, counsel said to Mr. Morrison, "You have taken an affidavit in which you said, 'I have seen and talked with John Wilno a number of times, and he has never told me or expressed a desire that he wanted to have his wife back with him and provided for by him?'" and the probation officer, Mr. Morrison, replied, "Yes, I don't believe he ever did" (S. C., p. 23). It is true that after the defendant and her children were forced out of their home by the petitioner, the defendant, Anna Wilno, made a criminal complaint against her husband for desertion and non-support of herself and her children. As to the occasion of the criminal trial in December, 1924, in reference to the allegations made by the petitioner that she stated on the witness stand that she would not resume cohabitation with her husband, the facts are that she stated, "I will

in one way, but in another way I don't think he will take me back" (S. C., p. 78). The testimony of Judge Erwin E. Marshall is to the effect that it was his recollection that she was not willing to go back to live with her husband, "and then she assigned the reason why she was not" (S. C., p. 13). The testimony of Judge Marshall is to the effect that Mrs. Wilno assigned reasons but that he did not recall the exact language and that the effect of it was that she said that if he did take her back, he would only use her as a house rag (S. C., p. 14). The testimony of County Detective James S. Kirkham, a witness for the petitioner, is to the effect that Mrs. Wilno would not return to live with her husband because she said that her husband had thrown her and the children out and assigned other reasons as well (S. C., p. 17). Detective Kirkham in his testimony stated at the criminal trial that Mrs. Wilno was bitter against her husband in relating to his treatment of her (S. C., p. 17).

As to the allegation made by the petitioner that in view of the fact that the defendant swore out a criminal complaint against her husband for desertion, that showed obstinate desertion on her part, it is submitted that this reasoning is fallacious. If a conclusion is to be drawn from that fact, it is clear that where the defendant had the petitioner, her husband, arrested for desertion and non-support of herself and her children, she certainly showed a justifiable conduct. She showed that because her husband had thrown her and the children out of his house, she rightfully regarded him as the deserter and her conduct was altogether proper in seeking support for herself and her children by exercising the rights given to her by the Legislature. While it may be true that under a strict construction of the Act in question by the courts of this State that even though a husband by his conduct and acts forced his wife to leave her home, while that would justify constructive desertion, yet as the statute in question is a penal one, it must

necessarily be construed strictly, and the husband in such a circumstance could not be regarded as guilty of violating the Crimes Act, but would be guilty of constructive desertion in equity.

As to the allegation made in the brief of the petitioner-appellant that the defendant, Anna Wilno, ordered the petitioner out of the house, thus showing that her desertion was obstinate the facts are as follows: Probation Officer William Morrison and the petitioner, John Wilno, came to the home of the defendant at the request of the defendant, in February, 1926, where the petitioner came to get the children to take them to a place with heat. After the small children were dressed and the smallest child was handed to the petitioner, the testimony is that he said to defendant, "If your mother had a heart, she wouldn't let me have the children," which resulted in the defendant grabbing her child back (S. C., pp. 79-80). The testimony of Flossie Wilno, the daughter of the petitioner and defendant, is to the same effect for she testifies that her father said to her mother, "If you had a good heart you wouldn't give me this kid" (S. C., p. 92). Probation Officer Morrison's testimony to the effect that the defendant became hostile towards the petitioner was after the petitioner, John Wilno, had made some remarks to his wife that caused her to grab her child back, and in answer to the question propounded by the Court, "Things were amicable until the time he made some remark?" Mr. Morrison answered "Yes" (S. C., p. 22). The allegation made by the petitioner-appellant in his brief that he was ordered out of the house showing obstinacy on the part of the defendant is very misleading as the facts just stated show that he was ordered from the house only after he had insulted Mrs. Wilno and shown bad faith in his mission. The ostensible purpose of his visit with Probation Officer Morrison was to get the children so as to take them to his home to be provided for with heat. The petitioner's remarks and conduct at this time clearly

showed that he did not really want to take the children. On the occasion of this visit in February, 1926, he was asked by his daughter Flossie, "Listen, Pop, as long as you are taking the children, why not take Mom?" and her father answered, "I wouldn't take your mother back as a gift" (S. C., p. 92).

The proofs show that the defendant looked for a house only after she was directed and commanded to do so by threats and force (S. C., pp. 65-66). It is true that the defendant ordered one Michael Papero, who was in the express business, to move her furniture (S. C., p. 25). The defendant denies that at the time of the moving her husband asked her to stay for the children's sake. It is a significant fact that the expressman, a witness for the petitioner, heard and knew of no other conversation between the petitioner and defendant except the words, "Well, if you are leaving you will stay for the kids' sake, anyhow" (S. C., p. 25), and when questioned by counsel for defendant as to why he did not tell that fact to the counsel for the petitioner some months previous to the trial of this cause when he made an affidavit filed in this cause, he stated, "I don't know" (S. C., p. 28). The facts are that at the time of the moving of the furniture by Mrs. Wilno her husband was in the house the entire time. There is no evidence that he endeavored to restrain the expressman from taking any of the furniture or that he said anything whatever to the expressman. The only evidence that the petitioner has in this case to the effect that he made some remarks to his wife to stay for the children's sake is that made by the expressman, Michael Papero, as above set forth who states that he heard that one sentence and nothing else. This testimony is contradicted by the defendant who testified that on the day of the moving on October 7, 1923, and for a week prior to that time the petitioner would not and did not speak to the defendant (S. C., pp. 66-67). The testimony of the expressman and the petitioner is also contradicted by the daugh-

ter of the petitioner and defendant, Flossie Wilno, who testified that her father ordered her mother to leave (S. C., p. 91), and that her father never asked her mother to stay for the children's sake (S. C., pp. 96-97). It is clear that the petitioner did not ask the defendant to stay on the day that she was moving as he did not even speak to her on that day (S. C., pp. 66-67). The defendant denies that she left her home voluntarily at any time but avers that she was put out every time (S. C., p. 76).

As to the cases cited at the end of point one in the brief of petitioner-appellant, it is respectfully submitted that the answers to and arguments on same will be found after answer to point ten in this brief.

ANSWER TO POINT TWO.

Defendant Denies That the Separation Was Against the Will of the Husband.

The separation was caused by the petitioner-husband who commanded and directed his wife to leave a week before the day she moved on October 7, 1923 (S. C., p. 65), which is corroborated by the daughter of the petitioner and defendant, Flossie Wilno (S. C., p. 91). The defendant denies that during the moving she was asked by the petitioner to stay. The testimony of the defendant shows that the petitioner did not ask her to stay on the day that she was moving. The only evidence that the petitioner has in this case to the effect that he made some remarks to his wife to stay for the children's sake is that made by the expressman, Michael Papero, as above set forth who states that he heard that one sentence and nothing else. This testimony is contradicted by the defendant who testified that on the day of the moving on October 7, 1923, and for a week prior to that time the petitioner would not and did not speak to the defendant (S. C., pp. 66-67). The testimony of the expressman and the petitioner is also contradicted

by the daughter of the petitioner and defendant, Flossie Wilno, who testified that her father ordered her mother to leave (S. C., p. 91), and that her father never asked her mother to stay for the children's sake (S. C., pp. 96-97). It is clear that the petitioner did not ask the defendant to stay on the day that she was moving as he did not even speak to her on that day (S. C., pp. 66-67). It is clear that her leaving was by the compulsion and acquiescence of her husband; that she did not leave the home willfully but that her leaving was involuntary as on October 7, 1923, the defendant-wife moved to No. 5 Johnson Place, where she and her six children occupied one room (S. C., p. 65).

As to the cases cited at the end of point two in the brief of petitioner-appellant, it is respectfully submitted that the answers to and arguments on same will be found after answer to point ten in this brief.

ANSWER TO POINT THREE.

Answering point three of the brief of the petitioner-appellant, the defendant did not leave through any cause of a trivial character contributed by the husband. It was a serious situation where the petitioner had for four years prior to the actual moving on October 7, 1923, subjected defendant to a course of cruel and brutal conduct terminating in a command and direction to the defendant accompanied by physical force to take her children and remove from his premises (S. C., p. 65). The testimony of the defendant is corroborated by the daughter of the petitioner and defendant, Flossie Wilno, who testified (S. C., p. 90), that the petitioner used to drink "an awful lot"; that the petitioner always struck her mother and that she always had to part them (S. C., p. 90); that she was present when her father ordered her mother to leave (S. C., p. 91). The testimony of the defendant is also corroborated by another daughter of the petitioner and defendant, Mary Wilno, who testified (S. C., p. 99) that her father always hit her mother and that when she

got home from work she would find her mother with "bloody noses and black eyes" (S. C., p. 101). The testimony of the defendant herself shows that prior to the time that she was compelled to leave her home on October 7, 1923, her husband refused to permit her to share his bed and she was forced to sleep with her daughter on a cot (S. C., pp. 70-71). The defendant's life was in constant danger as the petitioner threatened her with bodily injury and would strike her with different implements and utensils (S. C., p. 72). The testimony of the defendant shows that on the occasion when a Police Court Judge asked her to return after she was put out of the house to give him another opportunity (S. C., p. 76), that soon after her return the petitioner beat the defendant and threw her out again when the Police Court Judge ordered the petitioner's arrest when the defendant showed him her black eye and told him that her husband beat her and ordered her out of the house with the baby (S. C., p. 77). It is clear from this line of testimony that the petitioner had no love or affection for the defendant and wanted to get rid of her, which desire was finally accomplished when a week prior to October 7, 1923, he ordered the defendant out of his home (S. C., p. 65), and that on the day of the moving on October 7, 1923, the petitioner helped the defendant to move by taking down the pictures from the walls and said out loud while the defendant was in the room packing with her children, but not talking to the defendant, "Don't forget and take this along with you, for I don't want nothing that belongs to you," and with that expression he threw the pictures on the floor (S. C., p. 67). The testimony of the defendant shows also that the petitioner did not ask her to stay on the day that she was moving and since she was ordered out of the home a week prior to October 7, 1923, the petitioner did not speak to her (S. C., pp. 66-67). The daughter of the petitioner and defendant, Flossie Wilno, testified that on the day that they were moving, her father and mother were not speaking to

each other (S. C., p. 97). There is no evidence that the petitioner endeavored to restrain the expressman from taking any of the furniture or that he endeavored to restrain his wife and children from leaving. Such evidence shows an unmistakable desire of the petitioner to get rid of the defendant and shows that she was in danger of physical and bodily injury at his hands.

ANSWER TO POINT FOUR.

Answering point four of the brief of the petitioner-appellant, it is untrue that the defendant admitted in her testimony that she deserted her husband. The evidence is unmistakable and clear that she was compelled to leave him by his command attended with physical violence (S. C., p. 65). The defendant was justified in instituting criminal action to compel her husband to support herself and the children. The law making it a crime to desert and neglect to support a wife and children was the basis of this act. Had the petitioner show any interest in his family by giving the defendant money for the support of herself and her children as a father and husband should have done, there would have been no necessity for the defendant to have her husband apprehended. While a husband and a father may not be compelled to keep his wife and children under his own roof and may wantonly and with utter disregard turn his family into the street with impunity, the Legislature has passed a law which has received judicial sanction making it a crime for a father and a husband to desert or neglect to support his wife and children. The defendant was not interested in causing her husband any trouble. All she was interested in was to receive support for herself and the children. The fact that petitioner was arrested for desertion and non-support was brought on by the petitioner himself in that he refused to meet the obligations required of him as a father and husband. It is pointed out by the petitioner that though the wife had her husband arrested, no support was ordered her by the court. There is no

such testimony in this case. The facts are, however, that the petitioner was ordered to pay a certain sum each week for the support of the children in the custody of the defendant, having been found guilty in the Quarter Sessions Court. The reason that the Quarter Sessions Court could not order any money paid to the wife is that the Act under which the husband was indicted being penal and criminal, its scope could not be judicially enlarged, and being strictly construed, did not recognize constructive desertion which is well recognized in equity. The case of *State v. Herman Kretzkamp*, 87 N. J. L. 80, is authority for this principle. It is a significant fact that though the actual separation took place October 7, 1923, when the defendant was forced to leave her home at the command and direction of her husband, the petitioner in his petition of divorce (S. C., p. 8) stated that defendant deserted the petitioner in the month of December, 1924. There is no doubt but that if the petitioner felt that the defendant was the one that was guilty of deserting when she moved on October 7, 1923, that the petition would allege that the desertion took place on that date. It can readily be seen that the petitioner realized that he was the cause of the separation on October 7, 1923, and he is endeavoring to claim that the desertion took place on the occasion of the criminal trial in December, 1924, when he states in his testimony in this case that at that time while he was on the witness stand under indictment and charged with desertion and non-support of his wife and children, he in response to a question elicited by his counsel as to whether or not he would take his wife and children back answers "yes." It is evident that if that question was propounded by petitioner's counsel at the criminal trial under the circumstances just related, that such an offer to resume cohabitation is not fair and cannot be said to be bona fide. Had the petitioner asked his wife in good faith to resume cohabitation with her and she would refuse, the situation then would be different. The defendant, Anna Wilno, testified in this case

in response to a question propounded by counsel for the petitioner as to whether she remembered her husband being asked on the witness stand if he would take her back to live, answered, "I did not ask him on the stand and I did not hear you ask him. I had enough children by him for him to take care of me" (S. C., p. 8). Counsel for petitioner then asked the defendant in this case, "Would you have been willing to go back with your husband?" to which the defendant answered, "Yes" (S. C., pp. 78-79).

As to the cases cited at the end of point four in the brief of petitioner-appellant, it is respectfully submitted that the answers to and arguments on same will be found after answer to point ten in this brief.

ANSWER TO POINT FIVE.

Court Believed Testimony Which was in Conflict.

The brief of the petitioner-husband states that the defendant-wife testified of an occurrence between her and her husband, which occurred on September 7, 1925, and in another place on September 28, 1923. This is untrue as the defendant did not state anything in reference to September 7, 1925. Whenever the defendant used any dates as to the time when she had a conversation with her husband at which time she was directed to leave and physically maltreated, was on September 28, the week prior to October 7, 1923 (S. C., p. 65). There was a question propounded by the counsel for defendant as to the conversation that took place in September and which referred to the week prior to the day of actual moving which appears in the testimony as of September 7th, but this is clearly an error and a review of the testimony will show that what was meant was the 28th of September (S. C., p. 66). The brief of the petitioner-appellant points out that the defendant's testimony was not corroborated by anyone and denied by the petitioner. That is not a fact because the testimony of the defendant was corroborated amply

by the daughters of the petitioner and defendant, Flossie Wilno and Mary Wilno, and to some extent by the petitioner's own witnesses and it was only reasonable that the Court give credence to her testimony and her witnesses' testimony instead of the uncorroborated and incredible testimony of the petitioner. Besides hearing the testimony, the Court had the opportunity to observe the witnesses and it was altogether very apparent that reason and justice besides the proofs occasioned the Court to deny the petition for divorce.

ANSWER TO POINT SIX.

It is untrue as alleged in the brief for the petitioner-appellant that there was a determination on the defendant's part to leave. There was no way out of it. Having been commanded and directed by her husband a week before she moved on October 7, 1923, to leave with her children, which command was attended with physical violence on the part of the petitioner (S. C., p. 65), and having been refused admittance to the petitioner's bed immediately prior to the time of the actual leaving (S. C., pp. 70-71), and refusing to talk to the defendant during that last week, the petitioner talking to the children whenever he wished to convey any message to her (S. C., p. 66), there was no room for any determination on her part to decide to leave because it was a case of the petitioner compelling the defendant to leave with the children under threats of bodily injury. The defendant denies that at the time of the moving, her husband asked her to stay for the children's sake. It is a significant fact that the expressman, a witness for the petitioner, heard and knew of no other conversation between the petitioner and defendant except the words, "Well, if you are leaving you will stay for the kids' sake, anyhow" (S. C., p. 25), and when questioned by counsel for defendant as to why he did not tell that fact to the counsel for the petitioner some months previous to the trial of this cause when he made an affidavit filed

in this cause, he stated, "I don't know" (S. C., p. 28). The facts are that at the time of the moving of the furniture by Mrs. Wilno, Mr. Wilno was in the house the entire time. There is no evidence that he endeavored to restrain the expressman from taking any of the furniture or that he said anything whatever to the expressman. The only evidence that the petitioner has in this case to the effect that he made some remarks to his wife to stay for the children's sake is that made by the expressman, Michael Papero, as above set forth who states that he heard that one sentence and nothing else. This testimony is contradicted by the defendant who testified that on the day of the moving on October 7, 1923, and for a week prior to that time the petitioner would not and did not speak to the defendant (S. C., pp. 66-67). The testimony of the expressman and the petitioner is also contradicted by the daughter of the petitioner and defendant, Flossie Wilno, who testified that her father ordered her mother to leave (S. C., p. 91), and that her father never asked her mother to stay for the children's sake (S. C., pp. 96-97). It is clear that the petitioner did not ask the defendant to stay on the day that she was moving as he did not even speak to her on that day (S. C., pp. 66-67).

ANSWER TO POINT SEVEN.

Answering the allegation of the petitioner-appellant, in point seven (a) that there was obstinacy on the part of defendant in that the defendant-wife decided to leave some time before she actually left, the defendant denies that such allegation is true and avers that there is nothing whatever in the testimony to show that she decided to leave. The fact is that she was ordered to leave by her husband's command attended with threats and physical violence (S. C., p. 65).

Answering paragraph (b) of point seven in the Brief of Petitioner-Appellant, it is not obstinacy on the part of the defendant to have her husband arrested after she

and her children had been put out of their home by the petitioner when the petitioner was violating a law of this State in deserting and neglecting to support his wife and children. This action by the defendant against the petitioner was made to compel the petitioner to meet his obligation as a father and husband to support his family. Defendant denies that she stated unequivocally that during the criminal trial of her husband that she said she would not be willing to resume cohabitation with her husband. The fact as she stated it is, "I will in one way, but in another way I don't think he will take me back" (S. C., p. 78).

Answering paragraph (c) of point seven in the Brief of Petitioner-Appellant, which alleges that her husband went around to her father, the defendant states that this incident occurred, as she is informed, immediately after the desertion trial when her husband was found guilty and before sentence was passed upon him. The testimony of the defendant-wife in this case is that her husband knew where she lived and that if her husband wanted her to return to him he could have come to her home instead of going to her father's as he said he did (S. C., p. 86). The petitioner-husband knowing where his wife lived should have gone to her home if he was actually in good faith and really desired to take her back to live with him. The testimony of the defendant is that she left the petitioner upon numerous occasions prior to this last occasion in October, 1923, but avers that she left involuntarily and only after her husband put her out (S. C., pp. 76-77). Whenever the petitioner had sought the return of his wife after throwing her out of his home, and assured her that he would treat her with more respect and would not beat her in the future, she would return to her husband and resume cohabitation. The defendant, Anna Wilno, knows that at no time since October 7, 1923, after her husband compelled her and her children to leave, did her husband make reasonable advances to get her back (S. C., p. 67). The defendant, Anna Wilno, testified that her husband

had never asked her to return to him since October 7, 1923; that he had never sent anybody to ask her to return to him; and that she never received any letters from him asking her to return (S. C., p. 70). The petitioner, John Wilno, admitted in his testimony that he never wrote to his wife to take her back (S. C., p. 48). The testimony of the defendant, Anna Wilno, as to what took place at the time her husband and Mr. Morrison came to her home in February, 1926, when the petitioner came to get the children to take them to a place with heat was that Mr. Morrison, a probation officer, told Mr. Wilno that his wife would like to have heat for her too, and the petitioner answered that the defendant couldn't come around to his place (S. C., p. 79). Flossie Wilno, the daughter of the petitioner and defendant, testified as to what took place on the occasion that Mr. Morrison and her father came to her mother in February, 1926, for the purpose of taking the children to give them heat, she said, "Listen, Pop, as long as you are taking the children, why not take Mom?", and her father answered, "I wouldn't take your mother back for a gift" (S. C., p. 92). William N. Morrison, probation officer of Mercer County, a witness for the petitioner, testified as to the occasion when he went with the petitioner to the home of the defendant, Anna Wilno, in February, 1926, for the purpose of getting the small children and being questioned by counsel whether he remembered the petitioner as saying that he did not want her to be around his place of business as she would interfere with same answered, "He always claimed about that, that she came around to his business place and interfered with the business." Upon further questioning by counsel, Mr. Morrison, a probation officer, answered, "Well, when he was going to take the child, she asked leave to see the children. He told her he didn't want her to come down and interfere with the business" (S. C., pp. 22-23). Upon further questioning, counsel said to Mr. Morrison, "You have taken an affidavit in which you said, I have seen and

talked with John Wilno a number of times, and he has never told me or expressed a desire that he wanted to have his wife back with him and provided for by him?", and probation officer Morrison replied, "Yes, I don't believe he ever did" (S. C., p. 23). All of the above facts clearly show that the petitioner-husband did not want to live with his wife and also that he didn't want her to be around him.

ANSWER TO POINT EIGHT.

The testimony of Judge Erwin E. Marshall is to the effect that it was his recollection that she was not willing to go back to live with her husband, "and then she assigned the reason why she was not" (S. C., p. 13). The testimony of Judge Marshall is to the effect that Mrs. Wilno assigned reasons but that he did not recall the exact language and that the effect of it was that she said that if he did take her back, he would only use her as a house rag (S. C., p. 14). As to whether or not the petitioner-husband stated his desire to return to his wife at the time of his sentence, this was only a meaningless gesture as the defendant-wife was not present at the time of his sentence and consequently does not know what transpired there. To raise such points as these show the utter unreliability and bad faith of the petitioner-husband who has not a bit of corroboration as to any times that he personally asked Mrs. Wilno to come back and live with him. It was certainly unfair on the part of the petitioner-husband to subpoena Judge Marshall and court attaches who were his only witnesses at his trial besides the expressman and who could only testify as to recollection in the very limited way and whose testimony was in the main beneficial to the defendant-wife.

ANSWER TO POINT NINE.

Defendant denies absolutely that there was any description on her part but that because of her husband con-

PELLING her and the children to leave her home at his command and under threats of bodily harm and actual perpetration of violence (S. C., p. 65), the defendant was forced to move with her children to one room, which she rented for herself and her six children at No. 5 Johnson Place (S. C., p. 65). As to the allegation in the first paragraph of point nine that defendant testified to the occurrence uncorroborated against the denial of the petitioner, and shortly after the occurrence the wife left, this is not a fact. The fact is that the defendant-wife was corroborated by the testimony of the daughter of the petitioner and defendant, Flossie Wilno, who testified as to this occurrence when the petitioner ordered his wife to move and threw his wife out of the door (S. C., pp. 90-91).

ANSWERING the second paragraph of point nine of the Brief of the Petitioner-Appellant, which charges that there was no proof offered by the defendant-wife of the husband's conduct to show that it would endanger her life or health and render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife. The testimony of the defendant is corroborated by the daughter of the petitioner and defendant, Flossie Wilno, who testified (S. C., p. 90) that the petitioner used to drink "An awful lot"; that the petitioner always struck her mother and that she always had to part them (S. C., p. 90); that she was present when her father ordered her mother to leave (S. C., p. 91). The testimony of the defendant is also corroborated by another daughter of the petitioner and defendant, Mary Wilno, who testified (S. C., p. 99) that her father always hit her mother and that when she got home from work she would find her mother with "bloody noses and black eyes" (S. C., p. 101). The testimony of the defendant herself shows that prior to the time that she was compelled to leave her home on October 7, 1923, her husband refused to permit her to share his bed and she was forced to sleep with her daughter on a cot (S. C., pp. 70-71). The de-

FENDANT'S life was in constant danger as the petitioner threatened her with and perpetrated bodily injury and would strike her with different implements and utensils (S. C., p. 72). The testimony of the defendant shows that on the occasion when a Police Court Judge asked her to return after she was put out of the house to give him another opportunity (S. C., p. 76), that soon after, the petitioner beat the defendant and threw her out again when the Police Court Judge ordered the petitioner's arrest when the defendant showed him her black eye and told him that her husband beat her and ordered her out of the house with the baby (S. C., p. 77).

AS TO the cases cited at the end of point nine in the Brief of Petitioner-Appellant, it is respectfully submitted that the answers to and arguments on same will be found after answer to point ten in this brief.

ANSWER TO POINT TEN.

ANSWERING point ten of the Brief of the Petitioner-Appellant, the defendant-wife by way of separate defense in her answer (S. C., p. 11), accused her husband of adultery with one, Loretta Pizzutti. While the defendant's proofs of adultery committed by her husband were insufficient, it is a significant fact that though the petitioner was charged with committing adultery with Loretta Pizzutti that this Loretta Pizzutti was in the courtroom during the entire trial of this cause but never took the stand nor was called by the petitioner to rebut any of the testimony which involved her. Mary Kavacka testified that she lived next door to the house in which the petitioner boarded with his sister (S. C., p. 143) and that she saw this Loretta Pizzutti sit in the petitioner's lap (S. C., p. 144). Counsel for defendant propounded a question to the petitioner, "You commenced boarding there (referring to the Pizzutti home) after an answer had been filed in this case by Mrs. Wilno, charging you with adultery with this girl, isn't that a fact?" (S. C., p. 52). The petitioner admitted that he

went there after he filed his petition (S. C., p.53). The testimony of Flossie Wilno shows that as a result of getting letters in reference to scandal pertaining to the petitioner with Loretta Pizzutti she went in company with her sister Mary Wilno to the home of Loretta Pizzutti (S. C., p. 94), where she found her father with her and after telling Loretta about the scandal, Loretta in the presence of the petitioner told the petitioner's daughter Flossie Wilno and her sister, "I like your father and I am going to marry him." The petitioner answered, "I served your mother with divorce papers." His daughter Flossie then retorted, "Yes, that is the notice but you didn't get the divorce yet" (S. C., p. 95). The testimony of Mary Wilno is to the same effect that she and her sister went to the home of Loretta where she found her in the presence of Mr. Wilno (S. C., p. 100). The result was a fight started and the petitioner's daughters were put under arrest by their father, the petitioner (S. C., p. 101). Other witnesses such as Gaetano Franco (S. C., pp. 109-110) and Joseph Calabrese (S. C., p. 141) were hostile and would not testify as to the true facts.

**ANSWERS TO AND ARGUMENTS ON CASES
CITED BY PETITIONER-APPELLANT
IN HIS BRIEF.**

Hall v. Hall.

Counsel for petitioner-appellant cites in his brief the case of *Hall v. Hall*, 60 N. J. Eq. 469. That case holds, "That a desertion, in order to be obstinate, must be persisted in against the willingness of the injured party to have it concluded is declared by all our cases; and, ordinarily, when the husband has, by his conduct toward his wife, contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him."

While the case of *Hall v. Hall* does not require a husband to make advances to the wife where it would be arbitrary, counsel for defendant-respondent respectfully submits that such a situation does not exist in our case. In our case, the preponderating evidence shows that the petitioner ordered and compelled his wife to leave his abode.

In this case of *Hall v. Hall*, Chief Justice Gummere, who wrote the opinion for the Court of Errors and Appeals, said: "The burden rests upon the husband of showing the futility of making the effort which the law ordinarily requires of him; for it will not be presumed, in the absence of proof, that the wife will persist in continuing her desertion against the honest attempt of the husband to bring it to a conclusion."

This is not the situation in our case. This rule of law we submit would be applicable if the wife had instituted a suit for divorce against the petitioner but in our case it is the petitioner-husband who is at fault.

Applying the reasoning advanced by the counsel for the petitioner in point four that petitioner need make no advances as a matter of law, a man can get rid of his wife by treating her cruelly and barbarously and throw her out of his home, make no advances or assurances to his wife that he desired her to come back and that she would be safe in coming back, but the petitioner-husband could at the expiration of two years file his petition for divorce and claim that it was useless to ask his wife to come back because it would be only a temporary reunion as his home would be broken up again in view of the fact that he would again continually beat her and throw her out of their home.

This clearly is not what the Hall case holds as the present Chief Justice said in his opinion that the examination of the facts in that case disclosed that the wife left "with a fixed determination not to return to him, and that any effort on his part to induce her to do so would have been unavailing." The Hall case was decided as it was on the ground that the offending

party's conduct afforded no sufficient justification for the other spouse to leave. In our case, the testimony of Flossie Wilno, a daughter of the petitioner and defendant, shows that when she asked her father to take her mother back to give her heat in February, 1926, the petitioner-husband answered, "I wouldn't take your mother back for a gift" (S. C., p. 92). And the preponderating testimony shows that the defendant was turned out of her home.

Jacobs v. Jacobs.

Counsel for petitioner-appellant, in his brief, cited the case of *Jacobs v. Jacobs*, 135 *Atl. Rep.* 793. That was a case where a husband had deserted his wife after committing an assault and battery on her and told someone else that he would never again live with his wife. In that case, the petition for divorce was dismissed. It is submitted that the facts of that case is not applicable to this case.

Davenport v. Davenport.

Counsel for petitioner-appellant, in his brief, cites the case of *Davenport v. Davenport*, 97 *N. J. Eq.* 14; 127 *Atl. Rep.* 29. Vice-Chancellor Leaming said, "A wife's desertion, though willful, cannot be adjudged obstinate unless it has resisted such efforts or concessions on the part of her husband as he ought to have made to bring it to an end, under the particular circumstances of the case. This is the established test in this State by a long and harmonious line of decisions."

He goes on to say, "It is only when the deserted husband is without fault, and effort to induce the wife's return would probably prove unavailing, that the duty imposed upon him to seek her return can be excused. It will be observed that this exception is essentially a recognition or restatement of the principle of the rule already stated, that to be obstinate a desertion of a wife must be such as would resist such efforts and conces-

sions on the part of the husband to terminate it as a just man ought to have made under the circumstances of the case."

In the *Davenport v. Davenport* case, the petition was dismissed by the Vice-Chancellor who said, "It is clear that petitioner was not without fault, and equally clear that he made no effort to prevent his wife leaving, and has at no time sought her return; nor can it be determined that any reasonable efforts on his part to procure her return would have been unavailing."

Bowlbey v. Bowlbey.

Counsel for the petitioner-appellant cites in his brief the case of *Bowlbey v. Bowlbey*, 10 *C. E. Gr.* 406; 25 *N. J. Eq.* 406. This is another case which is really favorable to the defendant-respondent instead of the petitioner-appellant though cited by him. That was the case where a petition for divorce was dismissed. The Court in that case said in effect that assuming the separation to have been begun without the consent of the husband, "yet his subsequent conduct shows that he concurred in the separation, and did, in fact, make it compulsory against her. His omission to do anything whatever to invite or encourage or permit her to return, was manifestly due to his purpose to have her absence become a cause for divorce."

Trall v. Trall.

Counsel for the petitioner-appellant cites in his brief the case of *Trall v. Trall*, 5 *Stew. Eq.* 231; 32 *N. J. Eq.* 231. This is a case like the *Hall v. Hall* case, 60 *N. J. Eq.* 469, where the evidence clearly showed that there was no justification for the wife leaving the husband. This case is not applicable to our case because the preponderating testimony in our case shows that the defendant-wife was compelled to leave by her husband.

Smith v. Smith.

Counsel for petitioner-appellant cites in his brief the case of *Smith v. Smith*, 123 *Atl. Rep.* 738. It is unreasonable to compare that case with our case because in the *Smith* case, the defendant left her husband and went to live with another man and the inferences furnished a reasonable ground for belief that she was unchaste.

Doty v. Doty.

Counsel for petitioner-appellant cites in his brief the case of *Doty v. Doty*, 114 *Atl. Rep.* 546. That was a case where a wife instituted a petition for divorce on the ground of constructive desertion. That case appears to be favorable to the defendant-respondent instead of the petitioner-appellant in that it held a divorce was justifiable on the grounds of constructive desertion.

In our case, we submit that had the defendant-respondent filed a counter-claim asking for divorce on the grounds of constructive desertion, she would have been entitled to same. However, the defendant-respondent filed no counter-claim asking for a divorce.

Linnekkogel v. Linnekkogel.

Counsel for petitioner-appellant also cites in his brief the case of *Linnekkogel v. Linnekkogel*, 122 *Atl. Rep.* 372. That was a case where a decree refusing a divorce was appealed to the Court of Errors and Appeals which affirmed lower court. We submit that that case cited by the petitioner-appellant in his brief is not applicable to our case, in that the questions involved have no connection and are altogether dissimilar.

LAW.

The Burden of Proof.

The law casts upon the petitioner the burden of proving the allegations of his petition. It was incumbent upon him to show by a preponderance of the evidence, a willful, continued and obstinate desertion, and a failure of proof as to either element would necessarily be fatal.

Wood v. Wood, 63 *N. J. Eq.* 688. *Rogers v. Rogers*, 81 *N. J. Eq.* 479, on page 481. *Goldberg v. Goldberg*, 137 *Atl. Rep.* 438.

DESERTION MUST BE WILLFUL
CONTINUED AND OBSTINATE.

Assuming for sake of argument that the petitioner did not throw the defendant and his six children out but that she left willfully because of her husband's cruelty, the law imposes a duty upon the petitioner before the desertion can be adjudicated obstinate to make such efforts and concessions on his part to bring the desertion to an end, especially in view of the situation where it is made compulsory against her by the conduct of her husband.

Bowlby v. Bowlby, 25 *N. J. Eq.* 406. *Davenport v. Davenport*, 97 *N. J. Eq.* 14.

OFFENDING PARTY MUST MAKE
ADVANCES TO RESUME RELATIONSHIP.

It was the duty of the husband, after a separation occasioned by his conduct, to reform his habits, and after such reformation, and within two years, seek out his wife and apply to restore the marital relationship, giving her reasonable assurances of the sincerity of his reformation and her probable safety in resuming

marital relations with him. This the petitioner failed to do.

Cornish v. Cornish, 23 N. J. Eq. 208. *Lister v. Lister*, 65 N. J. Eq. 109, on page 112. *Popovics v. Popovics*, 98 N. J. Eq. 350, on page 352. *Skean v. Skean*, 33 N. J. Eq. 148, on page 151.

CONCLUSION.

It is respectfully urged that the decree dismissing the appellant's petition for divorce be affirmed.

Respectfully submitted,

DAVID FRANKEL,

Of Counsel with Defendant-Respondent.

ANSWER TO POINT ELEVEN.

Answering point eleven of the Brief of the petitioner-appellant, which supplements the original brief of petitioner-appellant and was served upon counsel for defendant-respondent some time after service of the original brief, but with consent, it is clear that the reasoning advanced in the brief of petitioner-appellant is fallacious. The testimony is that the actual separation took place on October 7, 1923 as evidenced by the testimony of the petitioner (S.C., p.31) and the testimony of the defendant (S.C., pp.64-65). The criminal trial of the petitioner, John Wilno, for desertion and non-support of his wife and children took place on December 22, 1924, as evidenced by the testimony of County Detective Kirkham, petitioner's own witness (S.C., p.16), which was more than a year after the separation. The petitioner having alleged in his petition for divorce that the desertion took place in December 1924, at the time of the criminal trial, impliedly acknowledges that he was the cause of the separation on October 7, 1923, which corroborates the defendant's testimony that she was compelled to leave her home by the command and compulsion of her husband attended with physical violence (S.C., p.65). Further, the petitioner-appellant seeks to construe his wife the deserting party because he states that at the criminal trial in December 1924, he stated that he wanted his wife and children back and also because he stated at the time that sentence was passed upon him, though not in the presence of his wife, that he wanted his wife to return. Assuming that the petitioner-appellant made such a statement at the criminal trial, it is submitted that such offer on his part can not be construed to have been made in good faith or with honesty. If the petitioner-appellant at the criminal trial had repented for his past conduct, it was his duty to seek his wife out and make reasonable advances for her return. As to the wife being asked, on the witness stand as a witness for the State whether she would return with her husband, her testimony is that she denied that she would unequivocally refuse to live with her husband. The petitioner's own witness, County Detective Kirkham, testified in this case that the defendant had testified that she and her children had been thrown out by her husband. The defendant-respondent's testimony is to the effect that at no time since October 7, 1923 after her husband compelled her and her children to leave did her husband make reasonable advances to get her back (S.C., p.67). It is evident that the petitioner-appellant did not want to have his wife because as late as in February 1926, one year before the petition for divorce was filed, the petitioner-appellant was asked by one of the older daughters to take her mother and children back, when the petitioner answered, "I wouldn't take your mother back for a gift" (S.C., p.92).